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The President

Proclamation 7873 of March 4, 2005

Irish-American Heritage Month, 2005

By the President of the United States of America

A Proclamation

The story of the Irish in America is an important part of the history of our country. This month, we pay tribute to Americans of Irish descent who have shaped our Nation and influenced American life.

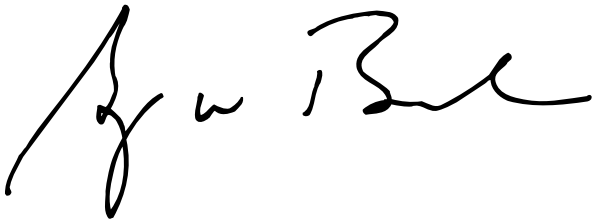
Long before the great wave of Irish immigration in the 1840s, people of Irish ancestry were defining and defending our Nation. Charles Thomson, an Irishman by birth, served as Secretary of the Continental Congress and helped design the Great Seal of the United States. Irish-born Commodore John Barry fought for our country's independence and later helped found the United States Navy.

Irish Americans have been leaders in our public life, and they have retained a proud reverence for their heritage. In June 1963, President John F. Kennedy spoke to the Parliament in Dublin and told the story of the Irish Brigade, a regiment that fought valiantly for the Union and suffered terrible losses during the Civil War. Two decades after President Kennedy's visit, President Ronald Reagan returned to his great-grandfather's hometown in County Tipperary, Ireland, and greeted the crowd in their own Irish language.

The industry, talent, and imagination of Irish Americans have enriched our commerce and our culture. Their strong record of public service has fortified our democracy. Their strong ties to family, faith, and community have strengthened our Nation's character. The Irish are a significant reason why Americans will always be proud to call ourselves a Nation of immigrants.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2005 as Irish-American Heritage Month. I call upon all Americans to observe this month by celebrating the contributions of Irish Americans to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Presidential Documents

Proclamation 7874 of March 4, 2005

Save Your Vision Week, 2005

By the President of the United States of America

A Proclamation

Eye disease causes suffering, loss of productivity, and diminished quality of life for millions of Americans. During Save Your Vision Week, we raise awareness of eye disease and encourage all our citizens to take action to safeguard their eyesight.

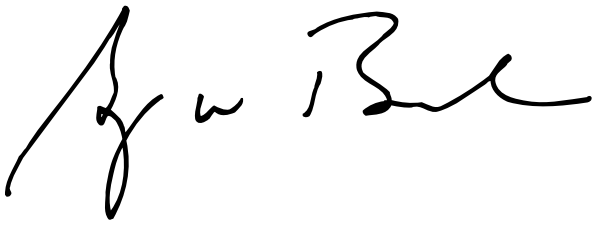
As people age, they can develop conditions that affect eyesight, including cataracts, glaucoma, retinal disorders, dry eye, and low vision. Through regular eye exams, many of these problems can be detected and treated early, reducing the risk of vision loss. The National Institute on Aging, part of the National Institutes of Health (NIH), suggests five steps for all Americans to take to protect their eyesight: regular physical exams; a complete eye exam every 1 to 2 years; a check of family history; immediate attention if you notice any loss of eyesight, eye pain, or other eye problems; and use of sunglasses and a hat to protect eyes from the damaging effects of ultraviolet rays.

My Administration is committed to helping Americans lead better, healthier lives. We have doubled funding for the NIH, helping the United States to stay on the leading edge of medical research and technological change. Through education, prevention, early detection, and further research into effective treatments for eye disease, we can bring hope and comfort to our citizens and help more Americans keep the precious gift of sight.

The Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as ''Save Your Vision Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 6 through March 12, 2005, as Save Your Vision Week. I encourage eye care professionals, teachers, the media, and public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of the measures all citizens can take to protect vision.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV

New Addresses

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Washington and Boston Regional Offices of the Federal Labor Relations Authority are relocating. Accordingly, it is necessary to amend 5 CFR chapter XIV to reflect the changes in the addresses for these offices.

DATES: *Effective Date:* This rule is effective March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Yvonne Thomas, Director, Administrative Services Division; Federal Labor Relations Authority; 1400 K Street, NW.; Washington, DC 20424–0001; (202) 218–7750.

SUPPLEMENTARY INFORMATION: Paragraph (d) of Appendix A to 5 CFR chapter XIV sets forth the addresses, telephone numbers, and fax numbers of the Regional Offices of the Federal Labor Relations Authority. Because of the relocation of two of these offices, it is necessary to revise these provisions of the agency's regulations. The Washington Regional Office will relocate effective March 14, 2005. The Boston Regional Office will relocate effective March 21, 2005.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Labor Relations Authority has determined that these regulations, as amended, will not have a significant economic impact on a substantial number of small entities, because they apply to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

These regulatory changes will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

These rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. These rules will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

These regulations contain no information collection or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*).

CHAPTER XIV—FEDERAL LABOR RELATIONS AUTHORITY

■ For the reasons set out in the preamble and under the authority of 5 U.S.C. 7134, Appendix A to 5 CFR Ch. XIV is amended as follows:

■ Appendix A to 5 CFR Ch. XIV, paragraphs (d)(1) and (d)(2), are revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) * * *

(1) Boston, Massachusetts Regional Office—10 Causeway Street, Suite 472, Boston, MA 02222–1043; telephone: (617) 424–5730; fax: (617) 424–5743.

(2) Washington, DC Regional Office-1400 K Street NW., Suite 200, Washington, DC 20424–0001; telephone: (202) 482–6700; fax: (202) 482–6724.

* * * * *

Dated: March 2, 2005.

Yvonne Thomas,

Director, Administrative Services Division.

[FR Doc. 05–4579 Filed 3–8–05; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[Docket No. DA–04–02]

Section 610 Review: Fluid Milk Promotion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agriculture Marketing Service (AMS) review of the Fluid Milk Promotion Program under the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has determined that the Order should be continued without change.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of the review. Requests for copies should be sent to David Jamison, Branch Chief, Promotion and Research Branch, Dairy Programs, Stop 0233—Room 2958, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–6967, e-mail: *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: The Fluid Milk Promotion Act of 1990 (Fluid Milk Act) (7 U.S.C. Section 6401 *et seq.*), authorized the Fluid Milk Promotion Order (Order) (7 CFR part 1160), a national processor program for fluid milk promotion and education. The program's objective is to educate Americans about the benefits of milk, increase fluid milk consumption, and maintain and expand markets and uses for fluid milk products in the contiguous 48 States and the District of Columbia.

The program became effective on December 10, 1993, when the Order was issued. Processors marketing more than 3,000,000 pounds of fluid milk per month, excluding those fluid milk products delivered to the residence of a consumer, fund this program through a 20-cent per hundredweight assessment on fluid milk processed and marketed in

consumer-type packages in the contiguous 48 States and the District of Columbia.

The Order provides for the establishment of the Fluid Milk Board, which is composed of 20 members appointed by the Secretary of Agriculture. Fifteen members are fluid milk processors who each represent a separate geographical region, and five are at-large members. Of the five at-large members, at least three must be fluid milk processors and at least one must be from the general public. The members of the Fluid Milk Board serve 3-year terms and are eligible to be appointed to two consecutive terms.

Currently, there are approximately 100 fluid milk processors subject to the provisions of the Fluid Milk Act. Processors that process less than 3,000,000 pounds of milk per month, excluding those fluid milk products delivered directly to the place of residence of a consumer, are exempt from this program. AMS provides federal oversight of the Fluid Milk Program.

A Notice of Review and Request for Written Comments was published in the **Federal Register** on March 30, 2004, (69 FR 16508). No comments were received.

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the RFA) to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the Fluid Milk Promotion Order (Order); (2) the nature of complaints or comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changes in the area affected by the Order.

The Order is not unduly complex, and AMS has not identified regulations that duplicate, overlap, or conflict with the Order. Over the years, changes to the regulations of the Order have been made to reflect current industry operating practices and to solve current industry problems to the extent possible. The Order is independently evaluated every year to determine the effectiveness of its programs and the results are reported annually to Congress. The Department has not received any complaints or comments from the public regarding the Fluid Milk Act, Order, or the regulations issued under the Order.

Based upon the review, AMS has determined that the Order should be continued without change. AMS plans to continue working with the dairy industry in maintaining an effective program.

Dated: March 4, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–4581 Filed 3–8–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–28–AD; Amendment 39–13994; AD 2005–05–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 768–60, Trent 772–60, and Trent 772–60 turbofan engines. That AD currently requires initial and repetitive surge margin testing of engines. This AD requires the same actions but at updated intervals. This AD also requires installation of updated software for the engine electronic controllers (EECs), and adds a terminating action for the surge margin testing requirement. This AD supersedure results from RR requiring EEC software to be revised, and extending the repetitive interval for surge margin testing for engines that have incorporated the software update for the EECs. This AD also results from RR introducing a stage 1 high pressure (HP) compressor casing and intermediate case outer location ring with wear-resistant coating, to reduce wear to prevent reduction in surge margin. We are issuing this AD to prevent a possible dual-engine in-flight surge, which could result in dual engine power loss.

DATES: Effective March 24, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 24, 2005.

We must receive any comments on this AD by May 9, 2005.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–28–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 referenced in this AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax; 011–44–1332–245–418.

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: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On July 24, 2003, the FAA issued AD 2003–15–09, Amendment 39–13252 (68 FR 46444, August 6, 2003). That AD requires initial and repetitive surge margin testing of RR models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. That AD resulted from several reports of low power surges. That condition, if not corrected, could result in a possible dual-engine in-flight surge, which could result in loss of control of the airplane.

Actions Since AD 2003–15–09 Was Issued

Since that AD was issued, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified us of related actions taken by the manufacturer to improve the engine surge margin. RR has extended the repetitive interval for surge margin testing for engines that have incorporated a certain software revision for the EECs. RR has also introduced a stage 1 HP compressor casing and intermediate case outer location ring with wear-resistant coating. This coating will prevent axial movement of components during operation, preventing wear resulting in increased rotor tip clearance and reduced surge margin. This AD requires initial and repetitive surge margin testing of engines. This AD also requires revised

software for the EEC to increase the in-flight N3 low idle schedule, and to maximize HP compressor surge margin. This AD also requires installing a stage 1 HP compressor casing and intermediate case outer location ring with wear-resistant coating. Incorporating these modifications is a terminating action to the repetitive surge margin testing. The actions specified in this AD are intended to prevent a possible dual-engine in-flight surge, which could result in dual engine power loss.

Relevant Service Information

We have reviewed and approved the technical contents of RR Alert Service Bulletin (ASB) No. RB.211–71–AD509, Revision 3, dated October 17, 2003, which describes procedures for initial and repetitive surge margin testing of engines. We have also reviewed and approved the technical contents of RR Service Bulletin (SB) No. RB.211–72–D574, Revision 1, dated January 12, 2004. That SB describes procedures for installing a stage 1 HP compressor casing and intermediate case outer location ring with wear-resistant coating. The CAA classified these service bulletins as mandatory and issued AD G–2004–010, dated April 8, 2004, in order to ensure the airworthiness of these RR models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines in the U.K.

Differences Between This AD and the Service Information

Although RR ASB No. RB.211–71–AD509, Revision 3, dated October 17, 2003, allows surge margin testing of engines during revenue service, this AD only allows surge margin testing during dedicated maintenance checks.

Bilateral Airworthiness Agreement

This engine model is manufactured in the United Kingdom (U.K), and is type certificated for operation in the United States under § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that they could be used on airplanes that are registered in the United States in the future. The unsafe condition identified previously is likely to exist or develop on other RR models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design. We are issuing this AD to prevent a possible dual-engine in-flight surge, which could result in loss of control of the airplane. This AD requires initial and repetitive surge margin testing of engines, and incorporating revised software for the EECs. This AD also requires installing a stage 1 HP compressor casing and intermediate case outer location ring with wear-resistant coating, to reduce wear to prevent reduction in surge margin. These installations are considered terminating action to the repetitive surge margin testing. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–28–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 rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this 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 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.

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 the regulation:

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

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

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

We prepared a 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–28–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. The FAA amends § 39.13 by removing Amendment 39–13252 68 FR 46444, August 6, 2003, and by adding a new airworthiness directive, Amendment 39–13994, to read as follows:

2005–05–06 Rolls-Royce plc: Amendment 39–13994. Docket No. 2003-NE–28-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 24, 2005.

Affected ADs

(b) This AD supersedes AD 2003–15–09, Amendment 39–13252.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. These engines are installed on, but not limited to, Airbus 330 series airplanes.

Unsafe Condition

(d) This AD results from RR requiring engine electronic controller (EEC) software to be revised, and extending the repetitive interval for surge margin testing for engines that have incorporated the software revision for the EECs. This AD also results from RR introducing a stage 1 high pressure (HP) compressor casing and intermediate case outer location ring with wear-resistant coating, to reduce wear to prevent reduction in surge margin. We are issuing this AD to prevent a possible dual-engine in-flight surge, which could result in dual engine power loss.

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.

No Revenue Service Surge Margin Testing Allowed

(f) Although RR Alert Service Bulletin (ASB) No. RB.211–71-AD509, Revision 3, dated October 17, 2003, allows surge margin testing of engines during revenue service, this AD only allows surge margin testing during dedicated maintenance checks.

Initial Surge Margin Testing

(g) Perform initial surge margin testing using paragraph 3 and Method A(1) of the Accomplishment Instructions of RR ASB No. RB.211–71-AD509, Revision 3, dated October 17, 2003, as follows:

(1) Before further flight, for engines that have accumulated more than 2,000 cycles-since-new (CSN) on the effective date of this AD; and for engines that have accumulated more than 1,000 cycles-since-overhaul (CSO) of the HP compressor casings and blades.

(2) Before accumulating 2,000 CSN for engines that have not had an overhaul of the HP compressor casing and blades.

(3) Before accumulating 1,000 CSO for engines that have had an overhaul of the HP compressor casings and blades.

EEC Software Update

(h) Within 6 months from the effective date of this AD, install an EEC that features revised software to increase the in-flight N3 low idle schedule. Information on the revised software standard that features the increase in the in-flight N3 low idle schedule can be found in RR SB No. RB.211–73–AE224.

Repetitive Surge Margin Testing

(i) For engines that do not have a revised EEC installed, as specified in paragraph (h) of this AD, perform repetitive surge margin testing at intervals not to exceed 130 cycles-since-last surge margin test. Use paragraph 3 and Method A(1) of the Accomplishment Instructions of RR ASB No. RB.211–71–AD509, Revision 3, dated October 17, 2003, for testing.

(j) For engines that do have a revised EEC installed, as specified in paragraph (h) of this AD, perform repetitive surge margin testing at intervals not to exceed 160 cycles-since-last surge margin test. Use paragraph 3 and Method A(1) of the Accomplishment Instructions of RR ASB No. RB.211–71–AD509, Revision 3, dated October 17, 2003, for testing.

Terminating Action

(k) Within 4,500 cycles-in-service after the effective date of this AD, install a stage 1 HP compressor casing and intermediate case outer location ring with wear-resistant coating. Use paragraph 3.A. of the Accomplishment Instructions of RR Service Bulletin No. RB.211–72–D574, Revision 1, dated January 12, 2004, to do this. Performing these actions is considered terminating action for the repetitive surge margin testing required by this AD.

Alternative Methods of Compliance

(l) 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

(m) You must use the Rolls-Royce plc service information specified in Table 1 of this AD to perform the testing and modifications required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax; 011–44–1332–245–418. You may review copies at the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–28–AD, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin No.	Page	Revision	Date
RB.211–71–AD509 Total Pages: 6	All	3	October 17, 2003.
RB.211–72–D574 Total Pages: 12	All	1	January 12, 2004.
Supplement to RB.211–72–D574 Total Pages: 2	All	1	January 12, 2004.

Related Information

(n) CAA airworthiness directive G–2004–010, dated April 8, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on February 25, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–4076 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 05–10]

RIN 1505–AB56

Extension of Import Restrictions Imposed on Certain Categories of Archaeological Material From the Prehispanic Cultures of the Republic of El Salvador

AGENCY: Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) regulations to reflect the extension of the import restrictions on certain categories of archaeological material from the Prehispanic cultures of the Republic of El Salvador which were imposed by T.D. 95–20. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to indicate this extension. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 95–20 contains the Designated List of archaeological material representing Prehispanic cultures of El Salvador.

DATES: *Effective Date:* March 8, 2005.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Joseph Howard, (202) 572–8701. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 344–1684.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of El Salvador on March 8, 1995, concerning the imposition of import restrictions on certain categories of archeological material from the Prehispanic cultures of the Republic of El Salvador. On March 10, 1995, the United States Customs Service published T.D. 95–20 in the **Federal Register** (60 FR 13352), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of article covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are ''effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists'' (19 CFR 12.104g(a)).

On March 9, 2000, the United States Customs Service published T.D. 00–16 in the **Federal Register** (65 FR 12470), which amended 19 CFR 12.104g(a) to reflect the extension for an additional period of five years.

Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security. Pursuant to section 1502 of the Act, the President renamed the ''Customs Service'' as the ''Bureau of Customs and Border Protection,'' also referred to as the ''CBP.''

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of El Salvador continues to be in jeopardy from pillage of Prehispanic archaeological resources, made the necessary determinations to extend the import restrictions for an additional five years on February 2, 2005. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The Designated List of Archaeological Material Representing Prehispanic Cultures of El Salvador covered by these import restrictions is set forth in T.D. 95–20. The Designated List and accompanying image database may also be found at the following Internet Web site address: *http://exchanges.state.gov/culprop/esimage.html.* The restrictions on the importation of these archaeological materials from the Republic of El Salvador are to continue in effect for an additional 5 years. Importation of such material continues to be restricted unless:

(1) Accompanied by appropriate export certification issued by the Government of the Republic of El Salvador; or

(2) With respect to Pre-Columbian material from archaeological sites throughout El Salvador, documentation exists that exportation from El Salvador occurred prior to March 10, 1995; or

(3) With respect specifically to Pre-Columbian material from the Cara Sucia archaeological region, documentation exists that exportation from El Salvador occurred prior to September 7, 1987.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(2).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

■ For the reasons set forth above, part 12 of the CBP Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104 [Amended]

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for El Salvador by removing the reference to ''T.D. 00–16'' and adding in its place ''CBP Dec. 05–10'' in the column headed ''Decision No.''.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–4625 Filed 3–8–05; 8:45 am]

BILLING CODE 4820–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000 and 4010

RIN 1212–AB01

Electronic Filing—Annual Financial and Actuarial Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The PBGC is amending its regulation on Annual Financial and Actuarial Information Reporting to require: Electronic filing in a standardized format of certain identifying, financial, and actuarial information and the filing of additional items of supporting information that are readily available to the filer, including a demonstration by a filer for the previous year that a filing is not required for the current year. The final rule will strengthen the defined benefit system and enhance the PBGC's ability to carry out its mission effectively and efficiently.

DATES: *Effective Date:* April 8, 2005. For a discussion of applicability of the amendments, see the Applicability section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James J. Armbruster, Acting Director, Legislative & Regulatory Department, or James L. Beller, Attorney, Legislative & Regulatory Department, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: On December 28, 2004 (at 69 FR 77679), the PBGC published a proposed rule modifying 29 CFR part 4010 of the PBGC's regulations (Annual Financial and Actuarial Information Reporting). (The PBGC published a correction on January 12, 2005 (at 70 FR 2080)). The PBGC received seven comment letters on the proposed rule (which are addressed below) and is issuing the final regulation with three modifications: (1) The proposed requirement to provide identifying information on exempt entities is eliminated; (2) for the first year this rule is in effect, filers may submit their reports by providing the information in an electronic format specified on the PBGC's Web site, rather than exclusively through the PBGC's Web-based software application, and (3) for that first year, companies may continue to use the optional assumptions method to determine whether filing is required. There are other minor modifications, as noted below.

This rule is part of the Pension Benefit Guaranty Corporation's (PBGC's) ongoing effort to streamline regulation and to improve administration of the pension insurance program, with a focus on making pension-related data more accurate, complete, timely, and—in particular—transparent. It is also part of the PBGC's ongoing implementation of the Government Paperwork Elimination Act and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). To enable the PBGC to anticipate and, when possible, minimize potential liabilities that may arise from the termination of significantly underfunded plans, ERISA section 4010 requires the reporting of actuarial and financial information by controlled groups with pension plans that have significant funding problems. Specifically, reporting is required by a controlled group if: (1) The aggregate unfunded vested benefits of all plans maintained by members of the controlled group exceed $50 million (disregarding plans with no unfunded vested benefits); (2) the conditions specified in section 302(f) of ERISA and section 412(n) of the Internal Revenue Code for imposing a lien for missed contributions exceeding $1 million have been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service has granted minimum funding waivers in excess of $1 million to any plan maintained by any member of the controlled group, and any portion of the waiver(s) is still outstanding.

Pursuant to section 4010 of ERISA, the PBGC issued its regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010 but does not currently require a standardized format. The PBGC reviews the information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information enables the PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information, the section 4010 filing plays a vital role in the PBGC's ability to protect participant and premium-payer interests.

As modified, the final rule: (1) Requires electronic filing of section 4010 information in a standardized format; (2) requires the submission of certain additional information the PBGC needs to carry out its role of protecting participant and premium-payer interests; (3) modifies the rules for determining whether aggregate unfunded vested benefits exceed $50 million (the $50 million section 4010 gateway test) for reporting for information years ending on or after December 31, 2005; and (4) removes the requirement that a power of attorney accompany any filing made by a person other than a filer.

Comments

The PBGC received seven comment letters: One from a nonprofit association representing a number of large employers, two from large corporations, and four from firms engaged in employee benefits consulting. Three commenters commended the PBGC for proposing to require the electronic submission of standardized section 4010 reports. One of those commenters stated that ''the electronic submission of standardized § 4010 reports is likely to help plan sponsors to submit (and the PBGC to collect) timely, complete, accurate, and useable information in a cost-effective manner.''

Commenters expressed three major concerns: (1) The new information requirements, in particular the requirement to provide identifying information on exempt entities, would be burdensome and unnecessary; (2) the elimination of the optional assumptions method for determining unfunded vested benefits could be unfair to some companies and would make it difficult for them to file in time; and (3) it would be difficult to adjust to the PBGC's Web-based software application and the additional filing requirements, especially in time to comply with the deadline for the first year under the new rules (April 15, 2005, for calendar year filers). There were a number of other miscellaneous comments.

New Information Requirements

Identifying information on exempt entities. Several commenters raised concerns about the proposed requirement to provide identifying information on exempt entities (defined in § 4010.4(d)). The commenters stated that the new requirement would be onerous and not helpful to the PBGC. One commenter noted that its controlled group includes a very large number of entities (over 1,000) and that many of these have little or no assets. It noted that entities with a *de minimis* amount of assets should not be of concern to the PBGC. Two commenters suggested that the PBGC should not change the current exclusion for exempt entities. Those commenters suggested that if a change is required, the PBGC could adopt a standard similar to the SEC standard for allowing the omission of certain companies from the list of subsidiaries on Exhibit 21 of SEC Form 10–K. One of these commenters suggested that the final rule should exempt financially sound companies from this requirement. One commenter suggested that the PBGC allow filers to provide this information by an attachment. One commenter questioned the PBGC's authority to require a filer upon written request to submit additional information about exempt entities and asked that the regulation specify the additional information about exempt entities the PBGC could request.

In light of these comments, the PBGC has decided to eliminate from the final rule the proposed requirement to provide identifying information on exempt entities. While the PBGC has determined that it is not necessary to collect this information on an annual basis for all section 4010 filers, such information is nonetheless vital to protecting the interests of the pension insurance program in certain circumstances, and the PBGC will request filers to provide such information on exempt entities when circumstances dictate. As explained in the preamble to the proposed rule (69 FR at 77681), exempt entities sometimes present a valuable source of recovery for PBGC claims (should any arise). This is because all members of the controlled group are jointly and severally liable to the PBGC. Therefore, the PBGC may be the only creditor, or one of just a few creditors, of the exempt entity. Section 4010 of ERISA and the existing regulation clearly allow the PBGC to ask for identifying and financial information from all section 4010 filers. Moreover, the PBGC could require the additional information annually from all filers. See the preamble to the final regulation that first implemented section 4010, 60 FR 66054, 66055 (Dec. 20, 1995). Therefore, the PBGC stresses that in specific cases it will exercise its authority under Title IV to request this additional information.

Expansion of financial information on non-contributing sponsors. One commenter said that extending the requirement to report revenue, assets and income to controlled group members who are not contributing sponsors seems to impose the administrative burden of sponsoring a defined benefit plan on entities who choose not to sponsor such plans. ERISA section 4010 specifically includes each member of a contributing sponsor's controlled group among the persons required to provide information. This requirement applies only to a controlled group member whose financial information cannot be ascertained by the PBGC because it is combined with other members' information in a consolidated financial statement. Moreover, as explained in the proposed rule (69 FR at 77681), the PBGC needs this information breakdown on all nonexempt entities included in consolidated financial statements, not only on contributing sponsors. This information enables the PBGC to identify which controlled group members hold the assets of the consolidated group. This information breakdown is currently maintained by controlled groups that file consolidated statements, and thus providing it would not be burdensome.

Changes in controlled group. One commenter had concerns about the requirement to report controlled group changes because such changes are already captured through reporting under part 4043 (Reportable Events). Part 4043 does not apply when a member joins the controlled group. In addition, the reporting requirements under part 4043 provide a number of waivers that are not appropriate for section 4010 filers. This commenter also argued that it would be burdensome to report the potentially high volume of non-substantive controlled group changes. Because the PBGC is eliminating the proposed requirement to report on exempt entities, much of this burden is relieved.

Frozen plans. A commenter stated that the information on frozen plans would provide little benefit to the PBGC and could be obtained elsewhere. As explained in the preamble to the proposed rule, the PBGC needs this information to better analyze unfunded vested benefits liability. The information is not always available in the actuarial valuation report or the Form 5500. That commenter also asked that the PBGC clarify what it means by plan freezes. The section 4010 filing instructions on the PBGC's Web site specify the types of freezes that must be reported.

Demonstration by previous filer of exemption. One commenter questioned the PBGC's authority to require a filer for the previous year to demonstrate that a filing is not required for the current year. The commenter suggested that if the PBGC retains this requirement, it should eliminate the requirement to report the amount of unfunded vested benefits. The PBGC has the general authority under Title IV to promulgate regulations to carry out the purposes of the title, and, as explained in the proposed rule, the requirement clearly furthers the purpose of ERISA by ensuring that filers do not overlook their filing obligations. In response to this comment, the PBGC has modified the section 4010 filing instructions on its Web site by removing the requirement that previous filers report the amount of unfunded vested benefits in all cases. However, the instructions make clear that the PBGC will, on a case-by-case basis, require a more complete

demonstration that filing is not required.

Optional Assumptions

Several commenters asked the PBGC to reconsider the proposed change to the regulation that would prohibit filers from using optional assumptions for determining unfunded vested benefits for purposes of the $50 million section 4010 gateway test. Commenters noted that some companies might be relying on the optional assumptions to determine that a 2004 filing is not required and eliminating this option would create the need to perform additional calculations to determine if a section 4010 filing is required, and if so, leave the filer little time to assemble the filing. Based on this, several commenters asked for a one-year delay in the effective date of the final regulation. In addition, one commenter stated that the optional assumptions method was an appropriate method and should not be eliminated.

As explained in detail in the preamble to the proposed rule (69 FR at 77681), reporting under section 4010 is warranted if the $50 million section 4010 gateway test is reached using the rules under § 4006.4 for determining unfunded vested benefits. However, in order to give companies additional time to adjust to this change, the final rule will allow the use of the optional assumptions for one more year (*i.e.*, for filings with respect to information years ending before December 31, 2005).

Web-Based Filing

A number of commenters said that it would be difficult to adjust to the PBGC's web-based software application and the additional filing requirements, and especially difficult to adjust in time to comply with the deadline for the first year (April 15, 2005, for calendar year filers). Several commenters said that the PBGC should not require submission through the PBGC's Web-based software application but should provide an alternative of submitting the information on an electronic spreadsheet or other commonly used electronic format. Several commenters urged that the Web-based software application should allow for more than one ID/password per filing, so that certain information could be entered under one password, while other information could be entered under another password. Two commenters suggested that the Web-based software be designed to allow the company to enter the financial information, without providing access to that information to the actuary, and allow the actuary to enter the actuarial information separately.

There are a number of reasons why the proposed rule required filing through the PBGC's Web-based software application. As stated in the preamble to the proposed rule (69 FR at 77680), filers currently provide section 4010 information in a non-standard format. This makes the information harder to use, restricts the PBGC's ability to perform electronic data analysis, and in general results in unnecessary work, inaccuracies, and delays. The PBGC has concluded that its ability to protect participant and premium-payer interests would increase and that the filing process would work more efficiently if filers provided information electronically and in a standardized format. Moreover, filing by using the PBGC's Web-based software application will have many advantages over filing by using a commonly-used electronic format. For example, the Web-based software will automatically create a database of section 4010 information and will perform validity checks to ensure the filing is internally consistent and complete before it is submitted. In addition, the Web-based software will retain the filer's previous year's filing and use this as a starting point for completing the current year's filing; in general, information will need to be reentered each year only to the extent it has changed from the prior year.

Nevertheless, in order to give filers more time to adjust to the web-based software application, for the first year (*i.e.*, for filings with respect to information years ending before December 31, 2005), filers may submit their reports in one of two manners: (1) Using the PBGC's Web-based software application, or (2) providing the information in a commonly-used electronic format as specified on the PBGC's Web site. For filings using a commonly-used electronic format, the section 4010 filing instructions on the PBGC's Web site specify the acceptable electronic file types (*e.g.*, compressed, pdf, Word, Wordperfect, or Excel) and the requirements for organizing and presenting the information. After the first year, filing will be permitted only through the PBGC's Web-based software application.

Although the Web-based software application does not provide for multiple passwords, where filings require the effort of multiple people, the PBGC expects that one person will collect the information from all sources and then enter the information via the Web-based software application. For the first year, filers may avoid the problems that might arise due to the single ID/password feature of the Web-based software application by choosing the option of submitting their reports in an electronic format as specified on the PBGC's Web site. The PBGC is looking into the feasibility of providing multiple passwords for reporting for future information years.

One commenter noted that neither the preamble nor the proposed rule provides that the PBGC's Web site would be secure. In the materials provided on the PBGC's Web site along with the proposed rule (*http://www.pbgc.gov/laws/lawsregs/federalreg/proprule.htm*), the PBGC explained that the Web-based software application would be secure. The PBGC has ensured that the Web-based software application uses the best available information security measures.

Some commenters asked for clarification on how certain aspects of the Web-based software application will work (for example, the procedure for submitting an actuarial valuation report after the section 4010 filing due date as permitted under § 4010.8(b) or correcting a filing after submission). The PBGC has made these clarifications in the section 4010 filing instructions on the PBGC's Web site.

Proposed Legislation

Several commenters suggested that the PBGC should delay the effective date of the proposed rule so that it can be coordinated with any legislation enacted by Congress affecting pension funding and disclosure. The regulatory changes made by this final rule are needed under the current state of the law and it would be contrary to the interests of the pension insurance program to delay implementation based on the assumption that Congress will legislate in this area. In the event that Congressional action affects part 4010 of the regulations, the PBGC will make appropriate changes.

Miscellaneous Comments

One commenter asked for clarification of the date by which contributions must be made in order to be taken into account for determining unfunded vested benefits for purposes of the $50 million section 4010 gateway test. The final rule clarifies that contributions must be paid on or before the due date for filing specified in § 4010.10(a) of this part (without regard to the alternative due date under § 4010.10(b) of this part). In addition, the final rule clarifies that contributions paid after the end of the plan year must be attributable to that plan year (*i.e*, the plan year for which they are to be taken into account). Thus, contributions made after the end of the

plan year and used to satisfy quarterly contribution requirements for the current plan year (the plan year in which they are made) are not taken into account. In addition, the final rule clarifies that contributions must be discounted back to the end of the plan year and the methodology for doing so.

Commenters asked for guidance on a number of reporting issues, including participant counts, breakdown of benefit liabilities by participant categories, and expected retirement age. The section 4010 filing instructions on the PBGC's Web site clarify these issues.

Another commenter suggested that rather than reporting the specific actuarial assumptions used to determine benefit liabilities, filers should be permitted to simply indicate that the required assumptions were used. The section 4010 filing instructions on the PBGC's website allow this, except that filers will be required to enter the interest rate and expense load because in many situations the incorrect interest rate is used or the load is omitted.

One commenter had concerns with allowing the PBGC, through instructions on its Web site, to modify the format of the information and to require the submission of additional information relating to the specific information described in the regulation. The commenter stated that it would impose a larger burden on filers if the PBGC does not formally announce and communicate the changes publicly and that filers would need advance notification of these changes. As explained in the preamble to the proposed rule (69 FR at 77680), the rule builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances. Moreover, the rule allows the PBGC to use its Web site to specify additional information only if that information relates to information already required by the regulation. The PBGC intends to make any changes public by means of advance posting to its Web site and by other means as appropriate.

Another commenter suggested that the PBGC should provide relief for filers that are unable to file because of problems with the PBGC's Web-based software application or other PBGC systems (such as e-mail). The PBGC's general authority to provide waivers and extensions under §§ 4000.5, 4000.32, and 4010.11 and the rules under § 4000.30 (relating to the need to resend an electronic submission for technical reasons) would cover such a case.

One commenter asked the PBGC to extend the comment period from 30 days to 90 days. The PBGC is not extending the comment period. In the preamble to the proposed rule, the PBGC explained in detail why a 30-day comment period was appropriate (69 FR at 77681).

One commenter expressed concern that the regulation provides no penalty relief for the first year's filings under the new procedures. Much of the commenter's concern has been addressed by the other modifications the PBGC has made to the proposed rule. Moreover, under its penalty policy, the PBGC can grant penalty relief for reasonable cause. The PBGC recognizes that filers may have section 4010 compliance questions, especially for the April 15, 2005, filing. The PBGC will provide information on its Web site, *http://www.pbgc.gov,* on how filers may seek guidance on section 4010 compliance questions.

Applicability

This rule applies to reporting for any information year ending on or after December 31, 2004, except that the optional assumptions method (as provided in § 4010.4(b)(2) of this part before amendment by this final rule) may be used for reporting for information years ending before December 31, 2005.

Compliance With Rulemaking and Paperwork Reduction Act Guidelines

The Office of Management and Budget has determined that this final rule is a ''significant regulatory action'' and has therefore reviewed the final rule under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. The tests for identifying filers under section 4010(b) of ERISA effectively limit the filing requirements to large companies and their controlled groups. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

The PBGC is submitting the information requirements contained in this final rule to the Office of Management and Budget for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. This final rule modifies paperwork collections under both part 4000 (approved under OMB control number 1212–0059; expires 10/31/06) and Part 4010 (approved under OMB control number 1212–0049; expires 2/29/08). 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.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4010

Pensions, Reporting and recordkeeping requirements.

■ For the reasons given above, the PBGC amends 29 CFR parts 4000 and 4010 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

■ 2. Revise § 4000.3 to read as follows:

§ 4000.3 What methods of filing may I use?

(a) *Paper filings.* Except for the filings listed in paragraph (b) of this section, you may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* You must submit the information required under 29 CFR part 4010 electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on electronic filings.* Current information on electronic filings, including permitted methods, fax numbers, and e-mail addresses, is—

(1) On our Web site, *http://www.pbgc.gov;*

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 1200 K Street, NW., Washington, DC, 20005–4026; telephone 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.)

■ 3. Amend § 4000.4 by adding two sentences to the end of the section to read as follows:

§ 4000.4 Where do I file my submission?

* * * You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

■ 4. Amend § 4000.23 as follows:

■ a. Add a sentence to the end of paragraph (a); and

■ b. Add a sentence to the end of paragraph (b)(3).

The additions read as follows:

§ 4000.23 When is my submission or issuance treated as filed or issued?

(a) * * * A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) * * *

(3) * * * A submission made through our Web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

■ 5. Amend § 4000.29 by adding three sentences to the end of paragraph (a) introductory text to read as follows:

§ 4000.29 What if I use electronic delivery?

(a) * * * A submission made through our Web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

■ 6. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

■ 7. Revise § 4010.3 to read as follows:

§ 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by the PBGC, the information shall be submitted electronically in accordance with the instructions on the PBGC's Web site.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

■ 8. Revise paragraphs (a)(3), (b), and (c) introductory text of § 4010.4 to read as follows:

§ 4010.4 Filers.

(a) * * *

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code, totaling in excess of $1 million and, as of the end of the plan year ending within the information year, any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the $50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5 of this chapter).

(2) *Contributions.* For purposes of determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section, contributions made after the end of the plan year ending within the filer's information year are taken into account for that plan year only to the extent that they are—

(i) Paid on or before the filing due date under § 4010.10(a) (without regard to the alternative due date under § 4010.10(b));

(ii) Attributable to that plan year for funding purposes under ERISA section 302(c)(1) and section 412(c)(10) of the Code; and

(iii) Discounted in accordance with § 4006.4(b)(2)(iv) if unfunded vested benefits are determined under § 4006.4(b) or in accordance with § 4006.4(c)(4) if unfunded vested benefits are determined under § 4006.4(c).

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a portion of a minimum funding waiver for a plan is considered outstanding unless—

* * * * *

■ 9. Revise paragraph (c)(2) of § 4010.5 to read as follows:

§ 4010.5 Information year.

* * * * *

(c) * * *

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 2004, and filer B's financial information with respect to its fiscal year ending September 30, 2004, must be submitted to the PBGC following the end of the 2004 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

■ 10. Revise paragraphs (a) and (b) of § 4010.6 to read as follows:

§ 4010.6 Information to be filed.

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group, and any other information relating to the information specified in §§ 4010.7 through 4010.9, as specified in the instructions on the PBGC's website.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on the PBGC's website, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

* * * * *

■ 11. Revise § 4010.7 to read as follows:

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) *Current members.* For an entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by

the IRS to the entity (or if there is no EIN for the entity, an explanation);

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the date immediately preceding the date the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) *Current plans.* For a plan that is maintained by the controlled group as of the last day of the filer's information year—

(i) The name of the plan;

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan had not been maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year; and

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (*e.g.*, service is frozen but pay is not).

(2) *Former plans.* For a plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan, and the identifying information required by paragraph (b)(1) as of the date immediately preceding that date.

■ 12. Amend § 4010.8 by revising paragraphs (a) and (b) as follows:

§ 4010.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide, in accordance with the instructions on the PBGC's website, the following actuarial information—

(1) The number of—

(i) Retired participants and beneficiaries receiving payments;

(ii) Terminated vested participants, and

(iii) Active participants;

(2) The fair market value of the plan's assets;

(3) The value of the plan's benefit liabilities, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined (in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(4) A description of the actuarial assumptions for interest (*i.e.*, the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, as used to determine the benefit liabilities in paragraph (a)(3) of this section; and

(5) A copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) Each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302(b) of ERISA or section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of ERISA or section 412(b)(3)(A) of the Code),

(ii) The itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) The minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) The actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of ERISA or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change),

(v) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors,

(vi) The current liability, vested and nonvested, calculated pursuant to section 412 of the Code, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants,

(vii) The expected increase in current liability due to benefits accruing during the plan year, and

(viii) The expected plan disbursements for the plan year; and

(6) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059–1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(5) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(6) of this section) with the PBGC by that alternative due date.

* * * * *

■ 13. Revise paragraphs (a) introductory text and (b)(2) of § 4010.9 to read as follows:

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following financial information for each controlled group member (other than an exempt entity)—

* * * * *

(b) * * *

(2) For each controlled group member included in the consolidated financial statements (other than an exempt entity), the member's revenues and operating income for the information year, and net assets at the end of the information year.

* * * * *

Issued in Washington, DC, this 4th day of March, 2005.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Philip R. Hertz,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 05–4623 Filed 3–8–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CCGD11–04–010]

RIN 1625–AA11

Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is designating the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as a Regulated Navigation Area (RNA) for certain commercial vessels transporting oil or hazardous material as cargo. This action is necessary to reduce significant hazards to subject vessels, the port and the public that are present during periods of poor weather conditions. The RNA codifies existing Captain of the Port San Francisco Bay (COTP) policies for vessels transporting oil or certain dangerous cargoes in bulk within Humboldt Bay.

DATES: This rule is effective from April 8, 2005 to October 11, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [CCGD11–04–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–2770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect the maritime public and the environment from the hazards associated with these cargoes and the extremely dangerous marine conditions at the Humboldt Bay Bar. A separate NPRM to make permanent the regulations in this TFR will be published to allow public comment prior to the issuance of a final rule to make these regulations permanent.

Background and Purpose

Because Humboldt Bay has a breaking bar, a narrow entrance channel, and no general anchorages within the bay, transits of this area present significant hazards to vessels carrying oil or hazardous material as cargo. The potential hazards to the subject vessels and the consequences of casualties involving commercial vessels carrying oil or hazardous material as cargo warrant special procedures to reduce the potential for a collision or grounding and the subsequent release of a cargo covered by this regulation.

Prior to the issuance of this TFR, the COTP issued several advisories addressing safe entry procedures for vessels transporting cargoes of oil or other hazardous material in the Humboldt Bay area. The most recent was a COTP Advisory put into effect in June of 1998 (COTP Advisory 01–98). This advisory included policies for when the bar would be closed to specified vessel traffic, notice requirements, vessel escort policies, and addressed parameters and procedures for waiver requests. In August of 2004, representatives from the Coast Guard Marine Safety Office San Francisco Bay met with Humboldt Bay stakeholders to review COTP Advisory 01–98. In attendance at this meeting were representatives from the California State Department of Fish and Game's Office of Oil Spill Prevention and Response, Humboldt Bay Coast Guard units, and local oil tank vessel operators. The COTP determined that although the policies contained within the COTP Advisory were appropriate, the policies and procedures should be codified into Federal Regulation to clearly establish the Coast Guard's authority to enforce them. In addition, it was decided that because Coast Guard Group Humboldt Bay is located near the Humboldt Bay Bar, the Group Commander would be better equipped to make timely judgments on bar conditions and to enforce this regulated navigation area. Therefore, the authority to enforce this regulated navigation is being delegated to the Commanding Officer of Group Humboldt Bay.

In this particular rulemaking, the Coast Guard is designating an area around the Humboldt Bay Bar as a RNA for the following purposes: (1) To establish the Coast Guard's authority to prohibit vessels carrying oil or hazardous material as cargo from crossing the bar during unsafe conditions, (2) to establish waiver, notice, and vessel escort policies, and (3) to delegate the authority for enforcing these regulations to the Humboldt Bay Group Commander.

Discussion of Rule

This rule designates the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as an RNA for the purpose of regulating vessels transporting cargoes of oil or hazardous material. The potential hazards associated with these products are serious enough to justify special procedures to reduce the possibility of a collision or grounding during periods of poor weather, which could lead to a release of the materials covered by this regulation. The regulation helps ensure the safety of mariners, the public, the port, and the environment by establishing requirements and procedures regarding: (1) Notice of intent to cross the bar, (2) when the bar would be closed to certain vessels due to weather conditions, (3) waivers, and (4) vessel escorts.

If the owner, master, agent, or person in charge of a vessel to which the regulation applies wants to obtain a waiver to cross the bar when it is closed, a waiver can be requested within 4 hours of crossing the bar and will be considered for approval by the Group Commander, or his designated representative, on a case-by-case basis. As a general rule waivers will only be granted when the following conditions exist: (1) Proper permission to cross has been received, (2) sea conditions at the bar are less than 6 feet, (3) winds at the bar are less than 30 knots, (4) the transit will take place during daylight hours, (5) the vessel has only a single tow or no tow, and (6) the visibility at the bar is greater than 1,000 yards.

Deviations from the procedures and requirements of this rule are prohibited unless specifically authorized by the Group Commander or his designated representative. Vessels or persons violating this section may be subject to

the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the regulations described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of $250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment from 10 to 25 years.

The Group Commander, acting as a representative of the Captain of the Port, San Francisco Bay, will enforce this regulation and has the authority to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Group Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation.

Regulatory Evaluation

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

The effect of this regulation is not significant for the following reasons: (1) Very few vessels carrying oil or hazardous material as cargo transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are being established by this regulation. Therefore, this rule is a continuation of the already established policy of monitoring the entrance and departure of the above-mentioned vessels. In addition, vessels will continue to be allowed to enter on a case-by-case basis with prior permission of the Group Commander, or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on a substantial number of small entities. The effect of this rule on small entities will not be significant for the following reasons: (1) Very few vessels carrying oil or hazardous material as cargo transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are being established by this regulation. Currently, the only entity that would be routinely subject to this regulation is an oil barge that makes twice-weekly transits of the Humboldt Bay Bar.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a RNA.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available for review in the docket indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Temporarily add § 165.T11–004, to read as follows:

§ 165.T11–004 Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, California.

(a) *Location.* The Regulated Navigation Area (RNA) includes all navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, Humboldt Bay, California.

(b) *Definitions.* As used in this section—

COTP means the Captain of the Port as defined in 33 CFR 1.01–30 and 3.55–20.

Group means Coast Guard Group Humboldt Bay.

Group Commander means the Commanding Officer of Coast Guard Group Humboldt Bay.

Hazardous Material means any of the materials or substances listed in 46 CFR 153.40.

Humboldt Bay Area means the area described in the location section of this regulation.

Oil means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Station means Coast Guard Station Humboldt Bay.

Tank Vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(c) *Applicability.* These regulations apply to the owners and operators of tank vessels transporting oil or hazardous material as cargo within the Humboldt Bay Area.

(d) *Regulations.*

(1) In addition to the arrival and departure notification requirements listed in 33 CFR 160, Ports and Waterways Safety—General, Subpart C—Notifications of ''Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes'', the owner, master, agent or person in charge of a vessel to which this notice applies shall obtain permission to cross within four hours of crossing the Humboldt Bay Bar. Between 6:30 a.m. and 10 p.m., notification/requests for permission can be made to Station Humboldt Bay on VHF–FM Channel 16, or at (707) 443–2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, notification/requests for permission can be made directly to Group Humboldt Bay on VHF–FM Channel 16 or at (707) 839–6113.

(2) Permission for a bar crossing by vessels or towing vessels and their tows to which this regulation applies is dependant on environmental and safety factors, including but not limited to: Sea state, winds, visibility, size and type of vessel or tow, wave period, time of day/night, and tidal currents. The final decision to close the bar rests with Humboldt Bay Group Commander or his designated representative. At a minimum, Humboldt Bay Bar Channel crossings by vessels subject to this advisory will generally not be permitted unless all of the following conditions exist: Proper permission to cross has been received, sea conditions at the bar are less than 6 feet, winds at the bar are less than 30 knots, the transit will take place during daylight hours, the vessel has only a single tow or no tow, the visibility at the bar is greater than 1,000 yards, and the vessel and tow are in proper operating condition.

(3) If the bar is closed to vessels to which this regulation applies, waiver requests will be accepted within four hours of crossing the entrance channel. If the waiver request is made between 6:30 a.m. and 10 p.m., the request should be made to Station Humboldt Bay on VHF–FM Channel 16, or at (707) 443–2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, the request can be made directly to Group Humboldt Bay on VHF–FM Channel 16 or at (707) 839–6113. Waiver requests must be made by the vessel master and must provide the following: A description of the proposed operation, the conditions for which the waiver is requested, the reasons for requesting the waiver, the reasons that the requester believes the proposed operation can be accomplished safely, and a callback phone number. The Station or Group Watchstander receiving the request will brief the Officer in Charge of the Station who will then brief the Group Commander. The authority to grant waivers rests with the Group Commander or his designated representative.

(4) In addition to the above requirements, vessels transporting liquefied hazardous gasses or compressed hazardous gasses in bulk as cargo into or out of Humboldt Bay are required to be aided by two assist tugs. If the vessel carrying the gasses is towed, the tow tug requirement is in addition to the towing tug. The assist tugs shall escort the vessel through its transit and must be stationed so as to provide immediate assistance in response to the loss of power or steering of the cargo vessel, its towing tug, or loss of control over the tow.

(5) Vessels to which this regulation applies may be required by the Group Commander or his designated representative to be escorted by a Coast Guard vessel during their transit. In addition, if a vessel master, agent, or pilot has concerns about the safety of a vessel's transit through the Humboldt Bay Entrance Channel, a Coast Guard escort may be requested. Requests for an escort should be directed to Station on VHF–FM channel 16 or at (707) 443–2213 between 6:30 a.m. and 10 p.m., or to Group on VHF–FM channel 16 or at (707) 839–6113 if between 10 p.m. and 6:30 a.m.

(e) *Enforcement.* Acting as a representative of the Captain of the Port, the Humboldt Bay Group Commander will enforce this regulation and has the authority to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Group Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation. All persons and vessels shall comply with the instructions of the Group Commander or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(f) *Effective Period.* This rule is effective from April 8, 2005 to October 11, 2005.

Dated: February 28, 2005.

Kevin J. Eldridge,

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

[FR Doc. 05–4599 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–171]

RIN 1625–AA87 (Formerly 1625–AA00)

Security Zone; Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent moving security zones around escorted vessels while they are in the navigable waters of the Fifth Coast Guard District. The security zones require all vessels in a 500-yard radius around escorted vessels, to operate at the minimum speed necessary to navigate safely and prohibits any vessels from entering within 100 yards of an escorted vessel. These security zones mitigate potential terrorist acts and enhance public and maritime safety and security.

DATES: This rule is effective April 13, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–171 and are available for inspection or copying at the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia, 23704 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant E.J. Terminella, Fifth Coast Guard District, at (757) 398–7783.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 28, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Fifth Coast Guard District'' in the **Federal Register** (69 FR 77684). We did not receive any letters commenting on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as Lead Federal Agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Terrorists have demonstrated both desire and ability to use multiple means in different geographic areas to successfully carry out their terrorist missions.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In addition to escorting vessels, a security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of vessels that the Coast Guard has determined need additional security measures during their transit. The District Commander has made a determination that it is necessary to establish a security zone around vessels that are escorted. This regulation, which will establish security zones around escorted vessels, will allow the COTP to safeguard escorted vessels, and reduce the possibility of a terrorist attack that might kill or injure persons or damage property in ports, harbors or waterfront facilities. Vessels that may require an escort are vessels of national security interest, such as a passenger vessel or a vessel carrying certain dangerous or hazardous cargo. These security zones around all escorted vessels during transit and while the escorted vessels are anchored, moored, or underway within the Fifth Coast Guard District will help ensure the safety of the ports and vessels in the navigable waters of the Fifth Coast Guard District.

Discussion of Comments and Changes

No comments were received. For purposes of clarification, however, we did revise the definition of *escorted vessel* to expressly exclude U.S. naval vessels, as defined in § 165.2015. This language was added to prevent any confusion between these zones and a Naval Vessel Protective Zone found at 33 CFR 165.2010.

Discussion of Rule

This rule places a 500-yard security zone around all vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a local law enforcement agency during their transit through the Fifth Coast Guard District. Only vessels traveling at the minimum safe speed may transit in the 500-yard zone and no persons or

vessels are allowed within 100 yards of any escorted vessel, without the permission of the District Commander, Captain of the Port or their designated representatives, while the vessel is within the Fifth Coast Guard District. Persons desiring to transit within 100 yards of an escorted vessel in the Fifth Coast Guard District must contact the local Captain of the Port on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted vessel. The boundaries of the Fifth Coast Guard District are defined in 33 CFR 3.25–1. This includes territorial waters 12 nautical miles from the territorial sea baseline as defined in 33 CFR part 2 subpart B. The boundaries of the four COTP zones within the Fifth Coast Guard District are defined in § 3.25–05, Philadelphia Captain of the Port Zone; § 3.25–10, Hampton Roads Marine Inspection Zone and Captain of the Port Zone; § 3.25–15, Baltimore Captain of the Port Zone, and § 3.25–20, Wilmington Marine Inspection Zone and Captain of the Port Zone.

All persons within 500 yards of an escorted vessel are required to operate their vessels at the minimum safe speed necessary to maintain navigation in accordance with the Navigation Rules in 33 CFR Chapter I, subchapters D and E.

Stationary vessels that are moored or anchored must remain moored or anchored when an escorted vessel approaches within 100 yards of the stationary vessel. Additionally, vessels restricted in their ability to maneuver must request permission from the District Commander, Captain of the Port or a designated representative, to enter within 100 yards of an escorted vessel in order to ensure safe passage in accordance with the Navigation Rules in 33 CFR Chapter I, subparts D and E.

Regulatory Evaluation

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

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

This finding is based on the relatively small percentage of ships that would fall within the applicability of the regulation, the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted in course or speed when the zone is being enforced, and the ease with which vessels may transit around the affected area. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the District Commander, Captain of the Port or their designated representatives.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.518 to read as follows:

§ 165.518 Security Zone; Waters of the Fifth Coast Guard District.

(a) *Definitions.* As used in this section—

Designated Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.25, to act on his or her behalf.

Escorted vessel means a vessel, other than a U.S. naval vessel as defined in § 165.2015, that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) Coast Guard Auxiliary surface asset displaying the Coast Guard Auxiliary insignia.

(3) State and/or local law enforcement asset displaying the applicable agency markings and or equipment associated with the agency.

State and/or local law enforcement officers means any State or local government law enforcement officer who has authority to enforce State criminal laws.

(b) *Location.* The following area is a security zone: 500-yard radius around escorted vessels in the navigable waters of the Fifth Coast Guard District as defined in 33 CFR 3.25–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 500 yards of an escorted vessel within the navigable waters of the Fifth Coast Guard District, unless traveling at the minimum speed necessary to navigate safely.

(2) No vessel may enter within a 100-yard radius of an escorted vessel within the navigable waters of the Fifth Coast Guard District, without approval from the District Commander, Captain of the Port or their designated representatives.

(3) Moored or anchored vessels, which are overtaken by a moving zone, must remain stationary at their location until the escorted vessel maneuvers at least 500 yards past.

(4) Vessels restricted in their ability to maneuver may request permission of the District Commander, Captain of the Port or designated representative to enter the security zone in order to ensure safe passage in accordance with the Navigation Rules in 33 CFR chapter I, subparts D and E.

(5) The local COTP may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(6) When moored, a security zone around an escorted vessel may also be enforced by Coast Guard, State or Local law enforcement personnel shoreside.

(7) Persons desiring to transit within 100 yards of an escorted vessel in the Fifth Coast Guard District must contact the local Captain of the Port on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz) or at telephone numbers:

Philadelphia: (215) 271–4807
Baltimore: (410) 576–2693
Hampton Roads: (757) 668–5555 or (757) 484–8192
Wilmington: (910) 772–2200 or (910) 254–1500

(8) If permission is granted to transit within 100 yards of an escorted vessel, all persons and vessels must comply with the instructions of the District Commander, Captain of the Port or their designated representative.

Dated: February 28, 2005.

S. Brice-O'Hara,

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

[FR Doc. 05–4601 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 166

Shipping Safety Fairways

CFR Correction

In Title 33 of the Code of Federal Regulations, Parts 125 to 199, revised as of July 1, 2004, in part 166, on page 791, the following text from §§ 166.103, 166.105, 166.110, and 166.200 is reinstated:

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

[CGD 86–082, 52 FR 33811, Sept. 8, 1987]

§ 166.105 Definitions.

(a) *Shipping safety fairway* or *fairway* means a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted. Temporary underwater obstacles may be permitted under certain conditions described for specific areas in Subpart B. Aids to navigation approved by the U.S. Coast Guard may be established in a fairway.

(b) *Fairway anchorage* means an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted within certain spacing limitations, as described for specific areas in Subpart B.

[CGD 81–80a, 48 FR 30110, June 30, 1983]

§ 166.110 Modification of areas.

Fairways and fairway anchorages are subject to modification in accordance with 33 U.S.C. 1223(c); 92 Stat. 1473.

[CGD 81–80a, 48 FR 30110, June 30, 1983]

Subpart B—Designations of Fairways and Fairway Anchorages

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

(a) *Purpose.* Fairways and anchorage areas as described in this section are established to control the erection of structures therein to provide safe approaches through oil fields in the Gulf of Mexico to entrances to the major ports along the Gulf Coast.

(b) *Special Conditions for Fairways in the Gulf of Mexico.* Temporary anchors

[FR Doc. 05–55502 Filed 3–8–05; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–WV–0002; FRL–7882–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton Including the Clay and Butler Magisterial Districts SO_2 Nonattainment Area and Approval of the Maintenance Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: EPA is correcting the format in the Identification of plan section of a State Implementation Plan (SIP) revision pertaining to a sulfur dioxide (SO_2) maintenance plan which EPA approved as part of the West Virginia SIP on January 10, 2005. This document corrects an error in the rule format of a final rule pertaining to the State of West Virginia.

DATES: *Effective Date:* Effective March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' or ''our'' are used we mean EPA.

On January 10, 2005 (70 FR 1664), we published a final rulemaking action announcing approval of a revision to the West Virginia State Implementation Plan (SIP) pertaining to an SO_2 maintenance plan for the City of Weirton and Clay and Butler Magisterial Districts in Hancock County. In our approval action, EPA incorporated by reference (IBR'ed) the State action and codified this action at § 52.2520(c)(62). The effective date of the action is March 11, 2005. Subsequently, on February 10, 2005 (70 FR 7024), we published an administrative rulemaking action announcing format revisions to the Identification of plan section in 40 CFR part 52, subpart XX (West Virginia), as well as changes to the format for materials which are IBR'ed. This administrative rulemaking action both recodified the existing § 52.2520 as § 52.2565 entitled ''Original Identification of plan section,'' and created a new § 52.2520 entitled ''Identification of plan.'' We are revising the table in § 52.2520(e) by adding the entry for the Hancock County SO_2 maintenance plan for the City of Weirton and Clay and Butler Magisterial Districts, effective March 11, 2005, so that it reflects EPA's January 10, 2005 approval action of this plan.

In rule document 05–418 published in the **Federal Register** on January 10, 2005, on page 1668 in the second column, Amendatory Instruction Number 2 is withdrawn.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of March 11, 2005. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR 52.52.2520(e) for West Virginia is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, recordkeeping and reporting requirements, Sulfur oxides.

Dated: February 28, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ Accordingly, the amendment to 40 CFR 52.2520 published in the **Federal Register** on January 10, 2005 (70 FR 1668), which was to become effective on March 11, 2005, is withdrawn, and 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry at the end of the table for the Sulfur Dioxide Maintenance Plan, City of Weirton; Butler and Clay Magisterial District (Hancock County) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Sulfur Dioxide Maintenance Plan.	City of Weirton; Butler and Clay Magisterial District (Hancock County).	7/27/04	01/10/05 70 FR 1664	The SIP-effective date is 3/11/05.

[FR Doc. 05–4473 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–P 0

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ104–0083; FRL–7875–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Maricopa Association of Governments (MAG) serious area carbon monoxide (CO) state implementation plan (SIP) for the Maricopa County CO nonattainment area, also referred to as ''the metropolitan Phoenix area'', as meeting the Clean Air Act (CAA) requirements for serious CO nonattainment areas. We are also approving the MAG CO Redesignation Request and Maintenance Plan for the Maricopa County CO nonattainment area as meeting CAA requirements for redesignation requests and maintenance plans. In addition, we are making a boundary change under Section 107 of the CAA to take the Gila River Indian Community (GRIC) out of the Maricopa County maintenance area. The portion of the Gila River Indian Community which is currently in the Maricopa County CO nonattainment area will be ''unclassifiable/attainment'' for CO, and will not be subject to the MAG CO Redesignation Request and Maintenance Plan.

DATE: *Effective Date:* This rule is effective April 8, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 9's Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901. Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you.

Electronic Availability

This document, our proposed rule which was published in the **Federal Register** on October 8, 2004, and the technical support document (TSD) are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air/phxco/index.html.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622–1622, e-mail: *tax.wienke@epa.gov,* or refer to *http://www.epa.gov/region09/air/phxco/index.html.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' mean U.S. EPA.

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I. Summary of EPA's Final Action

On October 8, 2004 (69 FR 60328), we published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of revisions to the SIP for the Maricopa County CO nonattainment area. These revisions to the SIP were adopted by the Arizona Department of Environmental Quality (ADEQ). Today, we are finalizing our proposal to approve the MAG serious area SIP for attainment of the CO air quality standard in the Maricopa County area. This action is based on our determination that this SIP complies with the CAA's requirements for attaining the CO standard in serious CO nonattainment areas such as the metropolitan Phoenix area.

We are also approving the MAG CO Redesignation Request and Maintenance Plan for the Maricopa County CO nonattainment area as meeting CAA requirements for redesignation requests and maintenance plans.

We are also making a boundary correction under Section 107 of the CAA for the Gila River Indian Community.

II. Response to Comments

We received three comments (two via electronic mail (e-mail) and one written letter) during the official comment

period for the October 8, 2004, proposal. Two comments were dated October 19, 2004, and one comment was dated November 8, 2004. In addition to these comments, we received three e-mails submitted after signature but prior to publication of the proposal in the **Federal Register**, two on September 22 and one on September 24, 2004. Since these e-mails raise the same issues as the comments submitted after publication, we discuss and respond to all of them below. The September 24, 2004, e-mail was submitted directly to EPA Administrator Michael Leavitt's office and was referred to EPA Region 9 for a response. We determined that the correspondence should be treated as public comment, and respond to it here. (This commentor also sent comments directly to Region 9 on September 22 and 24, 2004). We also received a letter of support from ADEQ regarding the boundary change for the Gila River Indian Community. We respond to the comments below in the order we received them.

E-Mails Submitted to EPA Prior to the Public Comment Period

We received three e-mails before the October 8 publication of the proposed action—two on September 22, and one on September 24 to Administrator Leavitt. These e-mails, however, solely raise issues unrelated to the action being taken by EPA.

Comment. The first e-mail received on September 22 stated that the Central Phoenix light rail project will increase the production of air pollutants due to the prohibition of left turns from certain streets where the trolley tracks will exist. The e-mail refers to an ''Air Quality Technical Report'', and states that 75 percent of the vehicles in the Phoenix vehicle mix will be cars, and 20 percent will be light trucks. This e-mail also refers to a ''New Starts Report for 2004'', dated December 2003. This report appears to refer to the projected use of the light rail trains.

Response. Our action in this notice will not have any impact whatsoever on the Central Phoenix light rail project.

Comment. This e-mail also states that the Phoenix area is not in conformity with ozone and PM–10 standards, and that the growth in VMT has exceeded population growth.

Response. Our action today only concerns carbon monoxide, not ozone or PM–10. Our approval is based on both monitored data indicating no violations of the CO standard in the past seven years and modeling which indicates no expected violations of the CO standard to the year 2015. While growth in VMT has exceeded population growth in Phoenix and other fast-growing metropolitan areas, tailpipe emissions standards at the national level and the use of cleaner-burning fuels and other emissions control measures at the local level have reduced CO emissions sufficiently to attain and maintain Federal ambient air quality standards.

Comment. The e-mail refers to the Final Environmental Impact Statement (FEIS), stating that the FEIS shows that the light rail project will not reduce traffic congestion or the production of air pollutants in the light rail corridor. This e-mail comments that ISTEA and TEA–21 legislation call for making transit more efficient, and the commenter does not believe the Phoenix light rail will increase speeds in the light rail corridor, and will not yield much farebox revenue when compared to the cost of moving light rail passengers.

Response. Our action today concerns the MAG serious area CO SIP for the Maricopa County CO nonattainment area and the MAG CO Redesignation Request and Maintenance Plan for the Maricopa County CO nonattainment area. The FEIS for the Phoenix light rail project is completely unrelated to this action.

Comment. The second e-mail from September 22 states that while MAG reports no violations of the CO standard since 1996, the most recent statistics haven't been applied to air quality modeling, and that the light rail trolley hasn't been properly factored in.

Response. The Maricopa County CO nonattainment area has monitored clean data every year between 1996 and 2003. This fact was reflected in our finding of attainment published on September 22, 2003, for the Maricopa County CO nonattainment area (*see* 68 FR 55008). MAG's transportation and emissions modeling includes the implementation of light rail.[1]

Comment. The e-mail which was sent to EPA Administrator Leavitt on September 24 states that there is no reason to believe that the air quality in the Phoenix area currently conforms to Federal standards for CO.

Response. Monitoring data gathered by ADEQ and Maricopa County indicate that the Maricopa County CO nonattainment area has not had a violation of the CO standard since 1996. The area is now in attainment for the CO Federal health-based standard for CO, based on data from the years 1999 and 2000. We noted this in our finding of attainment (*see* 68 FR 55008, page 55009, 3rd column).

Comment. The September 24 e-mail also states that our finding of attainment of the CO standard for the Maricopa County nonattainment area (68 FR 55008) reflects only data through 1999.

Response. The finding of attainment was based on monitoring data from the years 1999 and 2000 because 2000 was the attainment year for the Maricopa County serious CO nonattainment area. (*See* 68 FR 55008, September 22, 2003.) Section 179(c)(1) of the Clean Air Act provides that attainment determinations are to be based upon an area's ''air quality as of the attainment date''. Monitoring data gathered by ADEQ and Maricopa County since that time indicate that the Maricopa County CO nonattainment area has not had a violation of the CO standard since 1996, so current data have been reviewed and taken into account in our action today.

Comment. The September 24 e-mail questions how the CO standard can be met given the rapid increase in population and an even faster increase in VMT in the Maricopa County nonattainment area. The e-mail states that Maricopa County's population has been increasing 45 percent every 10 years in recent decades.

Response. MAG's data estimate about a 32 percent increase in population between 2004 and 2015. As indicated in the Appendix to the MAG CO Redesignation Request and Maintenance Plan, while VMT doubles between 1995 and 2015, CO emissions decrease. MAG's models properly account for the growth in VMT.

E-Mails Submitted to EPA During the Public Comment Period

Comment. The first e-mail dated October 19, 2004, asks how it can be possible to reduce CO emissions by half by 2015 assuming 1.2 million additional residents, 700,000–800,000 more vehicles, and additional airplanes and diesel trucks in the Phoenix metropolitan area.

Response. MAG's modeling estimates a 14 percent reduction in CO between 1994 and 2015 and is sufficient to maintain the ambient air quality standard for CO. Tier 2 emissions standards, cleaner burning gasoline, and other measures provide reductions which outweigh the increases in emissions due to vehicle miles travelled.

Comment. The first October 19 e-mail refers to a Draft Environmental Impact Statement (DEIS) in an air quality conformity report.

Response. This comment is not relevant to today's action.

[1] Telephone conversation with Cathy Arthur, Maricopa Association of Governments, November 19, 2004.

Comment. This same e-mail questioned the CO reductions attributed to oxidants and sulfur in fuel, again in a DEIS.

Response. It is not clear which project DEIS is referred to by the commenter. MAG used the MOBILE6 model, which is the model EPA requires all states except California to use for SIP development. The MOBILE model accounts for fuel properties such as oxidants and sulfur, and reduces the effects of oxidants on CO emissions over time. Most newer cars are equipped with electronic fuel injection systems that generally automatically compensate for the proper air-to-fuel mixture to reduce CO emissions.

Comment. This same e-mail refers to a ''new standard for CO'' that requires an 8-hour test, and refers to calm days in the summer when CO could be a problem.

Response. There is no new standard for CO; we assume the comment refers to the new 8-hour ozone standard. CO tends to be a wintertime problem, and CO emissions do not tend to be high in the summer.

Comment. The letter we received on October 19 via U.S. Mail questioned our proposed boundary change for the Gila River Indian Reservation. This letter indicated that the Gila River Indian Community is planning a large truck stop along the Reservation border with the Phoenix metropolitan area, as well as substantial development along the northern border of the reservation.

Response. Our proposal to change the boundary of the Phoenix CO maintenance area to remove GRIC was based on monitored air quality data, current emissions levels and sources, and planning considerations. The commenter has not provided any reliable facts about development on the Gila River Indian Reservation that would affect ambient CO concentrations to a degree sufficient to violate the NAAQS. In particular, diesel trucks idling at a truck stop would emit primarily particulate matter (PM) and nitrogen oxides, not CO. GRIC Department of Environmental Quality staff have indicated they are looking into truck stop electrification to reduce the impacts of idling trucks.[2]

Comment. The October 19 letter also questioned whether EPA established air quality monitoring stations on the Reservation or whether we relied on data from the GRIC. The e-mail asserts that the monitors and data were distorted for the purpose of attaining the boundary change.

Response. The commenter has provided only speculation, without any reliable facts to substantiate the claim.

Comment. Finally, the October letter asserts that the entire premise of a status change is faulty and biased.

Response. As stated earlier, the commenter has provided only speculation, without any reliable facts to substantiate the claim.

Comment. The e-mail dated November 8 asserts that MAG's Transportation Improvement Program (TIP) and Long Range Transportation Plan (LRTP) are deficient and not worthy of CO redesignation. The e-mail also raises a concern that the public needs to be protected in fast-growing areas like Maricopa County, and states that CMAQ funding should not be used for the Central Phoenix Light Rail Project.

Response. This comment raises issues unrelated to EPA's action. Our proposed approval of MAG's CO redesignation request and maintenance plan is an action on MAG's SIP revision, not on the TIP or LRTP. MAG has demonstrated through air quality modeling that the Maricopa County CO nonattainment area will stay below federal air quality standards until 2015. In this way, public health will be protected.

Regarding CMAQ funding, while EPA may review and comment on CMAQ funding proposals, final funding decisions are made by other agencies.

Comment. The November 8 e-mail also states that MAG uses flawed and old models, referring to the base year 1994 inventory which MAG used, EPA's MOBILE6 model, and the CO Complex model. This e-mail also states that oxygenated fuels increase aldehydes.

Response. While MAG used a base year 1994 inventory, the redesignation request and maintenance plan also contains emissions inventories for 1998, 1999, 2006, and 2015. We have reviewed these inventories and have found them to be complete, accurate, and current. EPA's MOBILE6 model is the model required to be used by all states except California for SIP development. Studies of air toxics from sources such as gasoline are currently underway at the national level, but there is currently no health standard for aldehydes.

Comment. This same e-mail states that the rapid growth in the MAG region will increase VMT, and that MAG's computer models do not properly incorporate these factors.

Response. As indicated in the Appendix to the MAG CO Redesignation Request and Maintenance Plan, while VMT doubles between 1995 and 2015, CO emissions decrease. MAG's models properly account for this growth in VMT.

III. EPA's Final Action

In today's action, we are approving the MAG Serious Area CO SIP for the Maricopa County CO nonattainment area and the MAG CO Redesignation Request and Maintenance Plan for the Maricopa County CO nonattainment area. We have evaluated the submitted SIP revisions and have determined that they are consistent with the CAA and EPA regulations.

We are approving the following elements of the Revised 1999 CO Plan for the metropolitan Phoenix area and the MAG CO Redesignation Request and Maintenance Plan into the Arizona SIP:

1. 1990 base year and 1993 and 1996 periodic emission inventories as required by sections 172(c)(3) and 187(a)(5).
2. Demonstration that the plan provides for the implementation of reasonably available control measures including transportation control measures under sections 172(c)(1) and 187(b)(2);
3. Demonstration of attainment by December 31, 2000, under section 187(a)(7);
4. Demonstration of reasonable further progress under sections 172(c)(2) and 187(a)(7);
5. Contingency measures under sections 172(c)(9) and 187(a)(3);
6. Forecasts of vehicle miles traveled and provisions for annual tracking and reporting under section 187(a)(2)(A);
7. Transportation control measures as necessary to offset growth in emissions under section 187(b)(2);
8. Attainment year and projected emissions inventories under section 175A;
9. Air quality monitoring requirements under section 110(a)(2) and section 172(c)(7);
10. CO motor vehicle emissions budgets for transportation conformity under section 176(c) for the attainment demonstration and the maintenance plan for the years 2000, 2006 and 2015 under the transportation conformity rule, 40 CFR part 93, subpart A;
12. Demonstration of maintenance under section 175A(a) and a fully-approved maintenance plan under section 175A;
13. Maintenance plan contingency measures under section 175A(d);
14. Commitment for subsequent maintenance plan revisions under section 175A(b);
15. Redesignation of that portion of the Gila River Indian Reservation that is now within the nonattainment area to ''nonclassifiable/attainment'; and

[2] Telephone conservation with Janet Travis, GRIC DEQ, December 2, 2004.

16. A determination that the improvement in air quality in the Maricopa County nonattainment area is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable implementation plan, implementation of applicable Federal air pollution control regulations, and other permanent and enforceable reductions.

We have previously approved the principal control measures relied on for attainment and contingency measures in the Revised 1999 CO Plan, including the area's enhanced inspection and maintenance program (required by section 187(a)(6)), oxygenated gasoline program (required by sections 187(b)(3) and 211(m)), and woodburning curtailment regulations. See 68 FR 2912, 69 FR 10161, 64 FR 60678 and 67 FR 52416.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to a state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are 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.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal 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 tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this final rule may have tribal implications. EPA's action will remove the Gila River Indian Community from the Phoenix CO maintenance area. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt State law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with representatives of tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Representatives of tribal governments approached EPA two years ago and requested that EPA make this boundary change. We agree with the technical and policy rationale the tribe provided, and believe that all tribal concerns have been met. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 3, 2005.

Wayne Nastri,

Regional Administrator, Region 9.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 1. Section 52.120 is amended by adding paragraphs (c)(118) and (c)(119) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(118) The following plan was submitted on March 30, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) *Revised MAG 1999 Serious Area Carbon Monoxide Plan for the Maricopa County Nonattainment Area*, dated March 2001, adopted by the Arizona Department of Environmental Quality on March 30, 2001.

(119) The following plan was submitted on June 16, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) *MAG Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area and Appendices*, dated May 2003, adopted by the Arizona Department of Environmental Quality on June 16, 2003.

PART 81—[AMENDED]

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

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

Subpart C—[Amended]

■ 2. In § 81.303, the table entitled ''Arizona—Carbon Monoxide'' is amended by revising the entry for the Phoenix Area to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date	Type	Date	Type
Phoenix Area:				
Maricopa County (part)	4/8/2005	Attainment.		
Phoenix nonattainment area boundary:				
1. Commencing at a point which is the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning, except that portion in the Gila River Indian Reservation;				
2. thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and showed on the U.S. Forest Service 1969 Planimetric Maps, except that portion in the Gila River Indian Reservation;				
3. thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, National Forest and Usery Mountain Semi-Regional Park, except that portion in the Gila River Indian Reservation;				
4. thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park, except that portion in the Gila River Indian Reservation;				

ARIZONA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
5. thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Section 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East, except that portion in the Gila River Indian Reservation;				
6. thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel, except that portion in the Gila River Indian Reservation;				
7. thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902, except that portion in the Gila River Indian Reservation;				
8. thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation, except that portion in the Gila River Indian Reservation;				
9. thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East, except that portion in the Gila River Indian Reservation.				
10. thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park, except that portion in the Gila River Indian Reservation;				
11. thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park, except that portion in the Gila River Indian Reservation;				
12. thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest, except that portion in the Gila River Indian Reservation;				
13. thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964, except that portion in the Gila River Indian Reservation;				
14. thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest, except that portion in the Gila River Indian Reservation;				

ARIZONA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
15. thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant), except that portion in the Gila River Indian Reservation;				
16. thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek, except that portion in the Gila River Indian Reservation;				
17. thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964, except that portion in the Gila River Indian Reservation;				
18. thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road, except that portion in the Gila River Indian Reservation;				
19. thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail, except that portion in the Gila River Indian Reservation;				
20. thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West, except that portion in the Gila River Indian Reservation;				
21. thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West, except that portion in the Gila River Indian Reservation;				
22. thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South, except that portion in the Gila River Indian Reservation;				
23. thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park, except that portion in the Gila River Indian Reservation;				
24. thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation, except that portion in the Gila River Indian Reservation;				

ARIZONA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
25. thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statues Section 11–109 and 11–113, which is the eastern line of Range 1 East, except that portion in the Gila River Indian Reservation;				
26. thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River, except that portion in the Gila River Indian Reservation;				
27. thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and				
28. thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East, except that portion in the Gila River Indian Reservation.				
* * *	*	*	*	*

* * * * *

[FR Doc. 05–4585 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW–2002–0068; FRL–7882–2]

RIN 2040–AE71

Extension of National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Activity That Disturbs One to Five Acres

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action postpones until June 12, 2006, the requirement to obtain National Pollutant Discharge Elimination System (NPDES) storm water permit coverage for oil and gas construction activity that disturbs one to five acres of land. This is the second postponement promulgated by EPA for these activities. This postponement will allow the Agency additional time to complete its analysis of the issues raised by stakeholders about storm water runoff from construction activities at oil and gas sites and of practices and methods for controlling these storm water discharges to mitigate impacts on water quality, as appropriate. Within six months of today's action, EPA intends to publish a notice of proposed rulemaking in the **Federal Register** for addressing these discharges and to invite public comments.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2002–0068. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, confidential business information 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 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Jeff Smith, Office of Wastewater Management, Office of Water, Environmental Protection Agency (4203M), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0652; fax number: (202) 564–6431; e-mail address: *smith.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action include operators of construction activities disturbing at least one acre, but less than five acres of land at oil and gas sites, North American Industrial Classification System (NAICS) codes and titles: 211—Oil and Gas Extraction, 213111—Drilling Oil and Gas Wells, and 213112—Support Activities for Oil and Gas Operations.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This description identifies the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not identified could also be affected. To determine whether your facility or company is affected by this action, you should carefully examine the applicability criteria in 40 CFR 122.26(b)(15) and (e)(8). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. When Does This Rule Take Effect?

Because this rule provides temporary relief from permitting requirements for certain dischargers, this rule is not subject to the general requirement for a thirty-day waiting period after publication before a final rule takes effect. By providing such relief, this rule ''relieves a restriction'' on these dischargers. 5 U.S.C. 553(d)(1). Moreover, pursuant to 5 U.S.C. 553(d)(3), EPA has good cause to make this rule effective immediately upon publication. The March 10, 2005, deadline this action extends is less than thirty days after the publication of this rule. Making this action effective as soon as it is published will help reduce any confusion by those affected by the rule regarding the necessity for obtaining permit coverage. Therefore, a thirty-day waiting period is unnecessary and would be contrary to the public interest.

II. Background

On January 18, 2005 (70 FR 2832), EPA proposed a fifteen month postponement of the permit requirement for oil and gas construction activity disturbing one to five acres, from March 10, 2005, to June 12, 2006, to allow time for EPA to complete its analysis of the economic impacts and the legal and procedural implications of the options that the Agency is considering regarding the regulation of storm water discharges from oil and gas-related construction sites, and to evaluate the practices and methods operators employ to control storm water discharges from the sites affected by this rule. In that proposal, EPA explained the background of the NPDES construction permit requirements, and why EPA believes it is appropriate to provide an additional fifteen month postponement of permit requirements for construction of oil and gas exploration and production facilities disturbing one to five acres. When describing construction activity that disturbs ''one to five acres'' or in discussing ''small'' construction activity in this preamble, EPA is referring to activities covered by 40 CFR 122.26(b)(15).

III. Response to Comments

EPA received a modest number of comments on its proposal to provide an additional fifteen month postponement of permit requirements for discharges from oil and gas-related construction activity disturbing one to five acres. EPA's responses to all of these comments may be found in the Response to Comment document that is part of the docket for this final rule.

IV. Today's Action

In today's action, EPA is extending until June 12, 2006, the deadline for obtaining NPDES storm water permits for oil and gas construction activity that disturbs at least one acre, but less than five acres of land and sites disturbing less than one acre that are a part of a larger common plan of development or sale that disturbs between one and five acres. The text finalized at § 122.26(e)(8) does not create any duty to apply for an NPDES permit that did not already exist as a result of EPA's Phase II regulations. Rather, this amendment merely extends the permitting deadline for a certain class of dischargers.

During the next fifteen months, EPA intends to (1) complete the economic impact analysis; (2) complete the evaluation of the legal and procedural implications associated with several options that the Agency is considering with regard to regulation of storm water discharges from oil and gas-related construction sites; and (3) continue to evaluate practices and methods operators may employ to control storm water discharges from the sites affected by this rule. One of the issues EPA will be examining during this period is how best to resolve questions posed by outside parties regarding section 402(l)(2) of the Clean Water Act, which exempts certain storm water discharges from oil and gas exploration, production, processing, or treatment operations or transmission facilities from NPDES permit requirements. EPA intends to convene at least one public meeting with stakeholders for the purpose of exchanging information on current industry practices and the effectiveness of those practices in protecting water quality and obtaining input on the appropriate approach for addressing construction storm water discharges from this industry. EPA will publish a separate notice in the **Federal Register** with information about this public meeting. Finally, EPA expects to propose and take some subsequent final action based on the Agency's conclusions following these activities prior to June 12, 2006.

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 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 rule 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 an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It merely postpones implementation of an existing rule deadline.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative

Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration size standards; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's action merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Because EPA is postponing a deadline for numerous small entities to comply with NPDES permit requirements, this final action will not impose any burden on any small entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule does not impose any costs. It merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This 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. It merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. 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 rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. It merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866.

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. The only effect of this rule is to (1) delay the permit authorization requirement for affected small oil and gas operations by an additional fifteen months and (2) allow

EPA time necessary to develop a further proposal to address storm water discharges from such activities.

I. National Technology Transfer And Advancement Act

As noted in the proposed rule, 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 standard 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 rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. However, EPA is exploring the availability and potential use of voluntary consensus standards developed consistent with the NTTAA and the requirements of the CWA as a means of addressing storm water runoff from oil and gas construction activities as part of a future rulemaking.

J. 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 9, 2005.

K. Petitions for Judicial Review

Under section 509(b)(1) of the Clean Water Act, judicial review of this action may only be had by filing a petition for review in the United States Court of Appeals within 120 days after March 9, 2005.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 3, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart B—[Amended]

■ 2. Revise § 122.26(e)(8) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) * * *

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources, other than discharges associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities, require permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by June 12, 2006.

* * * * *

[FR Doc. 05–4467 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0022; FRL–7699–8]

Clofentezine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clofentezine in or on grapes and persimmons. Makhteshim-Agan of North America, Inc. and the Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 9, 2005. Objections and requests for hearings must be received on or before May 9, 2005.

ADDRESSES: To submit a written objection or hearing request, follow the detailed instructions as provided in Unit VI of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0022. 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), Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501. 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: Carmen Rodia, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 305–6596; e-mail address: *rodia.carmen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of July 12, 2000 (65 FR 43004) (FRL–6591–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6119) by Aventis CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.446 be amended by establishing a tolerance for residues of the miticide clofentezine [(3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine), in or on grapes at 0.35 parts per million (ppm). Subsequently, Aventis CropScience sold all proprietary rights for clofentezine to Makhteshim-Agan of North America, Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176. Further, in the **Federal Register** of August 27, 2004 (69 FR 52688) (FRL–7676–3), EPA issued a similar notice announcing the filing of a pesticide petition (PP 4E6824) by the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway 1 South, North Brunswick, NJ 08902, requesting that 40 CFR 180.446 be amended by establishing a tolerance for residues of clofentezine, in or on persimmons at 0.05 ppm. These notices included a summary of the petitions prepared by the registrants. In order to harmonize with existing Codex maximum residue limits (MRLs) for grapes, the proposed tolerance level for grapes was subsequently revised to 1.0 ppm. There were no substantive comments received in response to these notices.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of clofentezine *per se* on grapes at 1.0 ppm and on persimmons at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC AND CHRONIC TOXICITY PROFILE OF CLOFENTEZINE TECHNICAL.

Guideline No.	Study Type	Results
870.3100	90–Day subchronic feeding toxicity, mouse	Incorporated into the 2–year mouse oncogenicity study.
870.3100	90–Day subchronic feeding toxicity, rat	NOAEL (systemic): 2.0 mg/kg/day LOAEL (systemic): 20.0 mg/kg/day based on increased cholesterol levels, liver-to-body weight ratios, liver weights, and centrilobular hepatocellular enlargement.
870.3150	90–Day subchronic feeding, non-rodent (dog)	NOAEL was not established. LOAEL (systemic): <80.0 mg/kg/day based on increased liver weights in both sexes and electrocardiographic changes in females.

TABLE 1.—SUBCHRONIC AND CHRONIC TOXICITY PROFILE OF CLOFENTEZINE TECHNICAL.—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal Developmental Toxicity, Rat	Maternal NOAEL: 1,280 mg/kg/day (above the Limit Dose of 1,000 mg/kg/day) Maternal LOAEL: 3,200 mg/kg/day based on differential staining and slight enlargement of the centrilobular hepatocytes. Developmental NOAEL: >3,200 mg/kg/day (above the Limit Dose) Developmental LOAEL: >3,200 mg/kg/day (above the Limit Dose)
870.3700	Prenatal Developmental Toxicity, Rabbit	Maternal NOAEL: 1,000 mg/kg/day (Limit Dose) Maternal LOAEL: 3,000 mg/kg/day based on decreased body weight and food consumption. Developmental NOAEL: 1,000 mg/kg/day (Limit Dose) Developmental LOAEL: 3,000 mg/kg/day based on decreased mean fetal weight.
870.3800	2-Generation Reproductive and Fertility Effects, Rat	Parental/Systemic NOAEL: ≥20.0 mg/kg/day Parental/Systemic LOAEL: >20.0 mg/kg/day Reproductive NOAEL: ≥20.0 mg/kg/day Reproductive LOAEL: >20.0 mg/kg/day Offspring NOAEL: ≥20.0 mg/kg/day Offspring LOAEL: >20.0 mg/kg/day
870.4100	Chronic Feeding Toxicity, Nonrodent (Dog)	NOAEL (systemic): 1.25 mg/kg/day LOAEL (systemic): 25.0 mg/kg/day based on increased liver weights, hepatocellular enlargement, and increased serum cholesterol, triglycerides, and alkaline phosphatase levels.
870.4200	Chronic Carcinogenicity (Feeding), Mouse	NOAEL (systemic): 50.70 mg/kg/day LOAEL (systemic): 543.0 mg/kg/day based on decreased body weights and body weight gains, increased incidence of eosinophilic areas in hepatocytes of males. In females, increased incidence of basophilic and/or eosinophilic foci or areas of hepatocyte alterations, mortality with amyloidosis as a contributing factor for increased mortality. No evidence of carcinogenicity.
870.4300	Combined Chronic Feeding Toxicity/Carcinogenicity Study, Rat	NOAEL (systemic): 1.72 mg/kg/day LOAEL (systemic): 17.3 mg/kg/day based on increased liver weights and liver-to-body weight ratios and increased thyroxin levels; and centrilobular hepatocellular hypertrophy and vacuolation, focal cystic degeneration of hepatocytes, and diffuse distribution of fat deposits in liver (M). Evidence of carcinogenicity in male rats [thyroid tumors].
870.5200	Mouse Lymphoma	Non-mutagenic (±) activation.
870.5250	Gene Mutation, *Salmonella*	Non-mutagenic (±) activation.
870.5395	*In vitro* Mammalian Cytogenetics Test (Erythocyte Micronucleus Assay), Mice	Non-mutagenic.
870.5450	Rodent Dominant Lethal Assay, Rat	Non-mutagenic.
870.5575	Mitotic Gene Conversion in *Saccharomyces cerevisiae*	Non-mutagenic and negative for mitotic recombination.
870.7485	General Metabolism, Rat	Male and female rats given clofentezine technical at 1,000 mg/kg manifested peak plasma levels of between 14 and 16 ppm at 6-8 hours post-dosing which then declined to 3 ppm at 24 hours post-dosing. Plasma half-life was approximately 3.5 hours. Whole body autoradiography of rats given a 10 mg/kg dose indicated poor gastrointestinal absorption with 60-70% of the given dose excreted in the feces during the first 24 hours and about 20% excreted in the urine. Major metabolites were 3-(2′-methyl-thio-3′ hydroxy phenyl)-6-(2′-chlorophenyl)-1,2,4,5-tetrazine and 3-,4-, and 5-hydroxyclofentezine. Both liver and kidney had the highest tissue concentration after 72 hours.

B. Toxicological Endpoints

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

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

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

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

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

In general, clofentezine has low acute toxicity by the oral, dermal and inhalation routes of exposure (Categories III and IV) although mild eye irritation has been observed in rabbits. No appropriate toxicological endpoint (effect) attributable to a single exposure (dose) was identified in any study including the available oral studies in the rat and developmental studies in the rat and rabbit; therefore, an acute RfD was not established and no risk is expected from acute exposure. Long-term dermal exposure and risk is not expected, based on the current use pattern. In addition, based on the overall low toxicity of clofentezine, there is minimal concern for short-, intermediate-, and long-term inhalation exposure and risk. A summary of the toxicological endpoints used for the clofentezine human health risk assessment is shown below in Table 2.

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

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary (General U.S. Population including infants and children)	NOAEL= 1.25 mg/kg/day UF = 100 Chronic RfD = 0.013 mg/kg/day	Special FQPA SF = 1x cPAD = chronic RfD Special FQPA SF = 0.013 mg/kg/day	Chronic Feeding Toxicity, Nonrodent (Dog) LOAEL = 25.0 mg/kg/day based on histopathology in the liver and elevated serum cholesterol, triglycerides, and alkaline phosphatase observed at the LOAEL.
Short-Term Dermal (1 to 30 days) (Residential)	Oral study NOAEL = 2 mg/kg/day (dermal absorption rate = 1%)	LOC for MOE = 100 (Residential)	90–Day subchronic feeding toxicity, Rat LOAEL = 20 mg/kg/day based on increased cholesterol, increased liver weights, thyroid colloid depletion and thyroid follicular cell hypertrophy.
Intermediate-Term Dermal (1 to 6 months) (Residential)	Oral study NOAEL = 2 mg/kg/day (dermal absorption rate = 1%)	LOC for MOE = 100 (Residential)	90–Day Subchronic Feeding Toxicity, Rat LOAEL = 20 mg/kg/day based on increased cholesterol, increased liver weights, thyroid colloid depletion and thyroid follicular cell hypertrophy.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.446) for the residues of clofentezine *per se*, in or on a variety of raw agricultural commodities (RACs). Specifically, tolerances for clofentezine are established for almonds, apples, apricots, cherries, nectarines, peaches, pears, and walnuts. Risk assessments were conducted by EPA to assess dietary exposures from clofentezine in food as follows:

i. *Acute exposure*. As discussed in Unit III.B, an acute dietary exposure assessment was not performed because an endpoint of concern attributable to a single oral dose was not selected for any population subgroup (including infants and children).

ii. *Chronic exposure*. In conducting the chronic and cancer dietary (food only) exposure assessments for clofentezine, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), Version 2.03, and the Lifeline™Model, Version 2.0, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic and cancer dietary exposure assessments: The Agency has determined that clofentezine *per se* and the 3-(2-chloro-4-hydroxyphenyl)-6-(2-chlorophenyl)-1,2,4,5-tetrazine metabolite are the residues of concern for the chronic dietary analysis. The chronic dietary analysis for clofentezine was based on anticipated residue levels (ARs) in the form of average field trial residue values, and the analysis included estimates for percent crop treated (PCT).

iii. *Cancer*. As explained in Unit III.C.1.ii above, the Agency assessed cancer dietary exposure for clofentezine using the same assumptions used for chronic dietary exposure. Cancer risk is determined for the general U.S. population only. The estimated exposure of the general U.S. population to clofentezine is 0.000023 mg/kg/day.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must, pursuant to section 408(f)(1), require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary (food only) risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT. The Agency used PCT information as follows:

For existing uses, the Agency used estimates of PCT for the chronic dietary (food only) risk assessment, which was determined using USDA's National Agricultural Statistics Service (NASS) usage data and EPA 2003 proprietary usage data (DOANE 2003). Table 3 below displays the chronic PCT estimates used for the existing uses of clofentezine. When the PCT for a commodity is estimated as <1%, the PCT used for risk assessment purposes is 1%.

TABLE 3.—CLOFENTEZINE ESTIMATES OF PERCENT CROP TREATED FOR EXISTING USES.

Commodity	Percent Crop Treated
Almonds	<1
Apples	5
Apricots	5
Cherries	<1

TABLE 3.—CLOFENTEZINE ESTIMATES OF PERCENT CROP TREATED FOR EXISTING USES.—Continued

Commodity	Percent Crop Treated
Nectarines	10
Peaches	5
Pears	5
Prunes & Plums	<1
Walnuts	<1

For the new uses, the Agency used PCT estimates for the chronic dietary (food only) risk assessment based on ''screening level'' usage data for agricultural crops. This information was retrieved from 1998–2003 USDA National Agricultural Statistics Service (NASS) usage data and EPA 2003 proprietary usage data (DOANE 2003) for the historically, most widely used miticide for control of pests for each crop. The 2003 NASS data were compared to the DOANE 2003 data, both yielded similar results and did not make a difference. As a result of this comparison, the highest, most conservative PCT estimate for each crop was used for the chronic dietary (food only) risk assessment. These highly conservative estimates should not underestimate actual usage of clofentezine on the new crops/sites. Some of these numbers may be based on information that does not cover all 50 states; therefore, it is possible that if the remaining (usually minor states for the crop) had been included, the quantity (pounds) of active ingredient would be slightly higher.

To further support the reliability of these PCT estimates, as a condition of registration, the registrant will be required to agree to report annually on the market share attained for the new uses for which clofentezine is registered. As a condition of registration, they will also be required to agree to mitigate dietary risk as deemed appropriate by the Agency should the market share data raise a concern for increased dietary risk. The Agency will then compare that market share information with the PCT estimates used to evaluate potential dietary risk. In those instances where percent market share is approaching or exceeding the predicted PCT estimate used in the Agency's risk assessment, EPA will conduct a new dietary risk assessment to evaluate the new dietary risk. If the market share data raise a concern for increased pesticide risk, the Agency will act to mitigate that dietary risk and

could employ several approaches, including but not limited to production caps, geographical limitations, removal of uses, or other means deemed appropriate by the Agency. Table 4 below displays the chronic PCT estimates used for the new uses of clofentezine. When the PCT for a commodity is estimated as <1%, the PCT used for risk assessment purposes is 1%.

TABLE 4.—CLOFENTEZINE ESTIMATES OF PERCENT CROP TREATED FOR NEW USES.

Commodity	Percent Crop Treated
Grapes	13
Persimmons	<1

The Agency believes that the three conditions listed in this Unit have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group, and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which clofentezine may be applied in a particular area.

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

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the FIRST and SCI-GROW models, the EECs of clofentezine for acute exposures are estimated to be 4.2 parts per billion (ppb) for surface water and 0.1 ppb for ground water. The EECs for chronic exposures are estimated to be 0.2 ppb for surface water and 0.1 ppb for ground water.

3. *From nondietary exposure*. The term ''residential exposure'' is used in this document to refer to nonoccupational, nondietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Clofentezine is not registered for use on any sites that would result in residential exposure. Therefore, a residential exposure assessment was not conducted.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to clofentezine and any other substances and clofentezine 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 clofentezine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of an MOE analysis or through using uncertainty (safety) factors in calculating a dose

level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10x when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no indication of an increased susceptibility of rat or rabbit fetuses/pups to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity studies.

3. *Conclusion*. EPA has determined that there are reliable data supporting removal of the additional 10x factor for the protection of infants and children. This decision was based on the following conclusions:

i. The toxicology database is complete;

ii. There is no indication of increased susceptibility of rats or rabbit fetuses/pups [quantitatively or qualitatively] to *in utero* and/or postnatal exposure to clofentezine in the developmental and reproductive toxicity studies;

iii. A developmental neurotoxicity study (DNT) is not required;

iv. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures; and

v. There are currently no registered residential uses of clofentezine.

E. Aggregate Risks and Determination of Safety

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

A DWLOC will vary depending on the toxicological endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

Human health aggregate risk assessments have been conducted for the chronic and cancer (food + drinking water) exposure scenarios. An acute aggregate risk assessment was not performed because an endpoint of concern attributable to a single oral dose was not identified for any population subgroup (including infants and children). Short-, intermediate- and long-term aggregate risk assessments were not performed because there are no registered or proposed residential uses for clofentezine. All potential exposure pathways were assessed in the aggregate risk assessment. All aggregate exposure and risk estimates do not exceed EPA's LOC for the chronic and cancer (food + drinking water) exposure scenarios.

1. *Acute risk*. As discussed in Unit III.E., clofentezine is not expected to pose an acute risk because an endpoint of concern attributable to a single oral dose was not identified for any population subgroup (including infants and children).

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clofentezine from food will utilize 0.1% of the cPAD for the general U.S. population, 0.3% of the cPAD for all infants (<1 year old), and 0.4% of the cPAD for children (1–2 years old). There are no residential uses for clofentezine that result in chronic residential exposure to clofentezine. In addition, there is potential for chronic dietary exposure to clofentezine in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown below in Table 5.

TABLE 5. —AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLOFENTEZINE.

Population/Subgroup	cPAD/mg/kg/day	%/cPAD/(Food)	Surface Water EEC/(ppb)	Ground/Water EEC/(ppb)	Chronic/DWLOC (ppb)
General U.S. population	0.013	0.1	0.2	0.1	450
All infants (<1 year old)	0.013	0.3	0.2	0.1	130
Children (1–2 years old)	0.013	0.4	0.2	0.1	130
Females (13–49 years old)	0.013	0.1	0.2	0.1	390

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clofentezine is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clofentezine is not

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

5. *Aggregate cancer risk for U.S. population*. In conducting the aggregate cancer risk assessment, only food and drinking water pathways of exposure were considered. At this time, there are no uses for clofentezine that would result in any non-occupational, non-dietary exposure (i.e., there are no dermal or inhalation routes of exposure that should be included in an aggregate assessment). The cancer risk from exposure to clofentezine residues in food was calculated as 4.31 x 10^{-7}. This is below EPA's level of concern for cancer risk (risks in the range of one in a million). A DWLOC was derived for the general U.S. population based on EPA's LOC for cancer or a risk in the range of one in one million (using the value of 1 x 10^{-6} as a first Tier value in calculating a conservative estimate of DWLOC that is consistent with the range of one in one million). The DWLOC is compared to the EECs of clofentezine in surface and ground water and is used to determine whether or not aggregate cancer exposures are likely to result in risk estimates that exceed EPA's LOC. Table 6 below summarizes the cancer aggregate exposure estimates to clofentezine residues.

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR CANCER EXPOSURE TO CLOFENTEZINE.

Population/Subgroup	Maximum Exposure (mg/kg/day)	Food Exposure (mg/kg/day)	Maximum Water Exposure (mg/kg/day)	Cancer DWLOC (ppb)	Ground/Water EEC/(ppb)	Surface Water EEC/(ppb)
General U.S. Population	2.66 x 10^{-5}	1.1 x 10^{-5}	1.56 x 10^{-5}	0.6	0.1	0.2

The EECs calculated for ground and surface water are less than EPA's calculated cancer DWLOC. Therefore, the cancer aggregate risk associated with the proposed use of clofentezine does not exceed EPA's level of concern for the general U.S. population and all population subgroups.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

A high-performance liquid chromatography (HPLC) analytical method exists for the determination of clofentezine residues. A petition method validation (PMV) was successfully completed by the analytical chemistry laboratory (ACL), and the method was found acceptable. The limit of quantitation (LOQ) and limit of detection (LOD) reported were 0.01 ppm and 0.003 ppm, respectively. The Agency concluded that the method was suitable for enforcement purposes. The method was forwarded to FDA for inclusion in Pesticide Analytical Manual (PAM)-Volume II. PAM-Volume I multiresidue methods are not acceptable for tolerance enforcement.

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

B. International Residue Limits

Codex MRLs exist for clofentezine on grapes. The Codex MRLs for grapes and the U.S. tolerances established for clofentezine on grapes by this rule are harmonized at 1.0 ppm. No Codex MRLs exist for clofentezine on persimmons.

V. Conclusion

Therefore, tolerances are established for residues of clofentezine *per se*, (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine), in or on grapes at 1.0 ppm and persimmons at 0.05 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0022 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 May 9, 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 Street, NW., Washington, DC 20005–3419. The

Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0022, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 25, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.446 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Grapes	1.0
* * *	* *
Persimmons	0.05
* * *	* *

* * * * *

[FR Doc. 05–4335 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0410; FRL–7699–2]

Fenbuconazole; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues of fenbuconazole [*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites *cis*- and*trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone, expressed as fenbuconazole in or on bananas (whole fruit); pecans; and stone fruit crop group (except plums and prunes). Dow AgroSciences, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on December 31, 2008.

DATES: This regulation is effective March 9, 2005. Objections and requests for hearings must be received on or before May 9, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the**SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0410. 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: J. R. Tomerlin, Registration Division (0705C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0598; e-mail address: *tomerlin.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of November 17, 2004 (69 FR 67351) (FRL–7686–6), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1F3989, 1F3995, and 2F4154) by Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petitions requested that 40 CFR 180.480 be amended by establishing a tolerance for combined residues of the fungicide fenbuconazole [*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites *cis*- and*trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone, in or on banana (whole fruit) at 0.3 parts per million (ppm) (2F4154); fruit, stone, group 12 (except plum, prune) at 2.0 ppm (1F3989); pecan at 0.1 ppm (1F3995). This notice included a summary of the petition prepared by Dow AgroSciences, LLC, the registrant.

The tolerances will expire on December 31, 2008.

Comments were received in response to the notice of filing from one individual. These comments are addressed in Unit IV.C.

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

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of banana (whole fruit) at 0.3 parts per million (ppm); fruit, stone, group 12 (except plum, prune) at 2.0 ppm; pecan at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents - rats	NOAEL = 1.3/1.5 mg/kg/day (M/F) LOAEL = 5.1/6.3 mg/kg/day (M/F) based on liver histopathology
870.3100	90–Day oral toxicity rodents - mice	NOAEL = 3.8/5.7 mg/kg/day (M/F) LOAEL = 11.1/17.6 mg/kg/day (M/F) based on liver histopathology
870.3150	90–Day oral toxicity in nonrodents - dogs	NOAEL = 3.3/3.5 mg/kg/day (M/F) LOAEL = 13.3/14.0 mg/kg/day (M/F) based on liver histopathology
870.3200	21/28–Day dermal toxicity - rats	NOAEL = 1,000 mg/kg/day (HDT) LOAEL = > 1,000 mg/kg/day
870.3250	90–Day dermal toxicity	Not performed
870.3465	90–Day inhalation toxicity	Not performed
870.3700	Prenatal developmental in rodents - rats	Maternal NOAEL = 30 mg/kg/day Maternal LOAEL = 75 mg/kg/day based on decreased body weight and body weight gain Developmental NOAEL = 30 mg/kg/day Developmental LOAEL = 75 mg/kg/day based on increased post-implantation loss and a decrease in the number of live fetuses/dam
870.3700	Prenatal developmental in nonrodents - rabbits	Maternal NOAEL = 10 mg/kg/day Maternal LOAEL = 30 mg/kg/day based on decreased food consumption and increased incidence of clinical signs (soft/scant/no feces and red discharge) Developmental NOAEL = 30 mg/kg/day Developmental LOAEL = 60 mg/kg/day based on increased early resorptions
870.3800	Reproduction and fertility effects - rats	Parental systemic NOAEL = 4 mg/kg/day Parental systemic LOAEL = 40 mg/kg/day based on maternal death during delivery, decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increased adrenal and thyroid/parathyroid weights Reproductive NOAEL = 40 mg/kg/day (HDT) Reproductive LOAEL = greater than 40 mg/kg/day Offspring systemic NOAEL: 4 mg/kg/day Offspring systemic LOAEL: 40 mg/kg/day based on decreased pup body weight, increased number of stillborn pups, decreased number of total offspring delivered and decreased viability indes
870.4100	Chronic toxicity - rodents	Requirements met by submission of studies according to OPPTS Harmonized Guideline 870.4300

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

Guideline No.	Study Type	Results
870.4100	Chronic toxicity - dogs	NOAEL = 3.75/0.38 mg/kg/day (M/F) LOAEL = 30/3.75 mg/kg/day (M/F) based on decreased body weight gain Note: Dose-related adaptive liver changes were observed in high-dose males and females
870.4200	Carcinogenicity - rats	Requirements met by submission of studies according to OPPTS Harmonized Guideline 870.4300
870.4200	Carcinogenicity - mice	NOAEL = 1.43 mg/kg/day (both M and F) LOAEL = 28.6/92.9 mg/kg/day (M/F) based on decreased body weight, increased relative and absolute liver weight, and hepatocellular hypertrophy and vacuolization Evidence of carcinogenicity
870.4300	Combined chronic toxicity/carcinogenicity - rat	NOAEL = 3.0/4.0 mg/kg/day (M/F) LOAEL = 30.6/43.1 mg/kg/day (M/F) based on decreased body weight gain (F), hepatocellular enlargement and vacuolization (F), increased thyroid weight (M and F), and histopathological lesions in the thyroid gland (M) Evidence of carcinogenicity
870.4300	Combined chronic toxicity/carcinogenicity - rat	NOAEL = Not established LOAEL = 30.4 mg/kg/day (M) based on decreased body weight gain, increased liver weight, and increased thyroid and parathyroid weights Note: Only males were used in this study. Insufficient evidence of carcinogenicity
870.5100	Gene mutation - bacterial reverse mutation assay	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay. Note: Only TA1535, TA1537, TA98, and TA100 were tested. This study is classified unacceptable.
870.5100	Gene mutation - bacterial reverse mutation assay	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay. Note: Only TA1535, TA1537, TA98, and TA100 were tested. This study is classified unacceptable.
870.5300	Cytogenetics - *in vitro* mammalian cell gene mutation test (CHO Cells)	No increase in mutant frequency at the HGPRT locus, in the presence or absence of S9 activation.
870.5385	Cytogenetics - mammalian bone marrow chromosomal aberration test (rats)	No increase in number of cells with aberrations or in aberrations per cell.
870.5550	Other effects - unscheduled DNA synthesis in mammalian cells in culture (rats)	No evidence (or a dose related positive response) that unscheduled DNA synthesis was induced.
870.7485	Metabolism and pharmacokinetics - rat	The mean recovery of radioactivity 4 days after exposure was 82.6–93.0% following single or repeated oral doses and 88.2–99.2% following single i.v. doses, indicating rapid absorption, distribution, and elimination. Rapid elimination and low tissue levels indicate low bioaccumulation of the parent and metabolites. Elimination occurred primarily by biliary excretion because recovery of radioactivity was mostly in the feces: 75.6–83.7% following oral exposure and 77.2–91.4% following i.v. exposure. In urine, radioactivity recovery was 5.5-12.6% for all dose scenarios. Peak radioactivity in the blood occurred 3 hours following a single low dose and 3–6 hours after a single high dose, indicating biphasic elimination. Only 8.5–14.8% and 0.0–2.7% of the parent compound was recovered in the feces and urine, respectively, indicating extensive metabolism. A number of major metabolites were identified; however, 50% and 20% of metabolites in the feces and urine, respectively, were not identified. Sex-related differences include a greater number of sulfate metabolites in female excreta compared to males, and a greater number of ketoacid metabolites in male urine compared to females.

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

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics - rat	The mean recovery of radioactivity 3–4 days after exposure was 90.4–104.5% following single or repeated oral doses, indicating rapid absorption, distribution, and elimination. Bioaccumulation of the parent compound and metabolites is low. There were no major sex- or dose-related differences in absorption, distribution, or elimination. Elimination occurred primarily by biliary excretion: Recovery of the administered dose occurred mainly in the bile (79.1–87.1%) 3 days after exposure and mostly in the feces (78.7–94.4%) 4 days after exposure. In contrast, radioactivity recovery in the urine was 3.2–11.5% at 3 and 4 days after exposure. Extensive metabolism occurred; numerous metabolites were found in the feces and urine. There is a dose-related difference in metabolism. A higher amount of parent compound was found in the feces following the single high dose compared to the single or repeated low dose(s), which suggests that saturation may be occurring at the high dose.
870.7600	Dermal penetration - rat	The highest dermal absorption was found in animals having the longest exposure dose. Mean % of the dose absorbed (sum of urine, feces, carcass, and skin) after 10 hours of exposure: *Dose (mg/kg)* *Percent Dermal Absorption* 0.125 4.25 1.25 2.08 125 0.45

B. Toxicological Endpoints

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

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure(MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenbuconazole used for human risk assessment is shown in Table 2 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–49 years of age)	NOAEL = 30 mg/kg/day UF = 100a Acute RfD = 0.3 mg/kg	Special FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.3 mg/kg	Developmental rat study Developmental LOAEL = 75 mg/kg/day based on increased resorptions and decreased live fetuses per dam

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

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	None	None	Not selected No appropriate dose and endpoint could be identified for these population groups.
Chronic dietary (all populations)	NOAEL = 3 mg/kg/day UF = 100a Chronic RfD = 0.03 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.03 mg/kg/day	Combined chronic toxicity/carcinogenicity - rat LOAEL = 30.6/43.1 (M/F) mg/kg/day based on decreased body weight gain, increased thyroid weight, and histopathological lesions in the liver and thyroid gland
Incidental oral (all durations)	None	None	Not selected No registered uses would result in residential exposure
Short-term (1 to 30 days) and intermediate-term (1 to 6 months) Dermal	None	None	Not selected No dermal or systemic toxicity was seen in a 21–day dermal toxicity study; poor absorption was seen in the dermal absorption study
Long-term dermal (several months to lifetime)	Oral study NOAEL = 3 mg/kg/day (dermal absorption rate = 4.25%)	Residential LOC for MOE = Not applicable Occupational LOC for MOE = 100[a]	Combined chronic toxicity/carcinogenicity - rat LOAEL = 30.6/43.1 (M/F) mg/kg/day based on decreased body weight gain, increased thyroid weight, and histopathological lesions in the liver and thyroid gland
Inhalation (all durations)	None	None	Not selected Low toxicity and use pattern does not indicate a need for risk assessment via inhalation.
Cancer (oral, dermal, inhalation)	Classification: Under the 1986 cancer classification scheme, fenbuconazole was classified as a Group C - Possible Human Carcinogen, with a low dose extrapolation model applied to the animal data for the quantification of human risk (Q1*). This was based on increased incidence of hepatocellular adenomas and carcinomas in male and female mice and of thyroid follicular adenomas and combined adenomas/carcinomas in male rats. Based on mechanistic data, quantification of risk was derived using combined hepatocellular adenomas/carcinomas in female mice. The upper bound estimate of unit risk, Q1* $(mg/kg/day)^{-1}$ is 3.59×10^{-3} in human equivalents.		

*Database uncertainty factor reduced to 1X.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.480) for the combined residues of fenbuconazole, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fenbuconazole in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues were used for all food commodities, 100% of all commodities were assumed to be treated, and default processing factors were used for processed commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM™ analysis evaluated the food consumption as reported by respondents in the USDA 1994–1996 and 1998 CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis is slightly refined in that it incorporates estimates of average percent crop treated (PCT), although it does use tolerance value residues for most commodities and default processing factors. Anticipated residues from USDA Pesticide Data Program monitoring data were used only for banana in the chronic dietary exposure analysis and risk assessment.

iii. *Cancer.* Chronic cancer risk for the overall U.S. population was estimated by multiplying the chronic exposure

estimate by the carcinogenic potential (Q*) of 0.0359 $(mg/kg/day)^{-1}$.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

A routine chronic dietary exposure analysis for the fungicide fenbuconazole and its*cis* and *trans* metabolites was based on 10% of apricot crop treated, 25% of blueberry crop treated, 25% of cherry crop treated, 30% of grapefruit crop treated, 15% of nectarine crop treated, 15% of peach crop treated, and 10% of pecan crop treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information for fenbuconazole is reliable and has a valid basis. Time-limited tolerances have existed for all crop commodities included in the risk assessment, and the Agency obtained estimates of fenbuconazole use from recognized pesticide use data bases. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which fenbuconazole may be applied in a particular area.

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

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

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

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

Based on the PRZM/EXAMS and SCI-GROW models, the estimated EECs of fenbuconazole for acute exposures are estimated to be 14.1 parts per billion (ppb) for surface water and 0.005 ppb for ground water. The EECs for chronic exposures are estimated to be 7.3 ppb (peak annual) and 5.9 ppb (30–year average) for surface water and 0.005 ppb for ground water.

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

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

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenbuconazole 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 fenbuconazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate

the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

However, the Agency does have concern about potential toxicity to 1,2,4-triazole and two conjugates, triazolylalanine and triazolyl acetic acid, metabolites common to most of the triazole fungicides. To support the extension of existing parent triazole-derivative fungicide tolerances, EPA conducted an interim human health assessment for aggregate exposure to 1,2,4-triazole. The exposure and risk estimates presented in this assessment are overestimates of actual likely exposures and therefore, should be considered to be highly conservative. Based on this assessment, EPA concluded that for all exposure durations and population subgroups, aggregate exposures to 1,2,4-triazole are not expected to exceed its level of concern. This assessment should be considered interim due to the ongoing series of studies being conducted by the U.S. Triazole Task Force (USTTF). Those studies are designed to provide the Agency with more complete toxicological and residue information for free triazole and are expected to be submitted to the Agency in late 2004 and early 2005. Upon completion of review of these data, EPA will prepare a more sophisticated assessment based on the revised toxicological and exposure data bases.

i. *Toxicology*. The toxicological data base for 1,2,4-triazole is incomplete. Preliminary summary data presented by the USTTF to EPA indicate that the most conservative endpoint currently available for use in a risk assessment for 1,2,4-triazole is a LOAEL of 15 mg/kg/day, based on body weight decreases in male rats in the reproductive toxicity study (currently underway). This endpoint, with an uncertainty factor of 1,000 was used for both acute and chronic dietary risk, resulting in an RfD of 0.015 mg/kg/day. The uncertainty factor of 1,000 includes an additional 10X safety factor for the protection of infants and children. The resulting PAD is 0.015 mg/kg/day.

ii. *Dietary exposure*. The USTTF conducted an acute dietary exposure assessment based on the highest triazole-derivative fungicide tolerance level combined with worst-case molecular weight and plant/livestock metabolic conversion factors. This approach provides a conservative estimate of all sources for 1,2,4-triazole except the *in vivo* conversion of parent compounds to free-triazole following dietary exposure. The degree of animal *in vivo* conversion is dependent on the identity of the parent fungicide. In rats, this conversion ranges from 0% to 77%, the*in vivo* conversion for fenbuconaozle is 2.5%. For purposes of this interim assessment, EPA used the dietary exposure estimates provided by the USTTF adjusted based on the highest rate of conversion observed for any of the parent triazole-derivative fungicides to account for this metabolic conversion. The assessment includes residue estimates for all food commodities with either existing or pending triazole-derivative fungicide registrations. The resulting acute dietary exposure estimates are extremely conservative and range from 0.0032 mg/kg/day for males 20+ years old to 0.014 mg/kg/day for children 1 to 6 years old. Estimated risks range from 22% to 93% of the PAD. In order to estimate chronic exposures via food, EPA used the 70th percentile of exposures from the acute assessment. The 70th percentile is a common statistic used to estimate central tendency from a distribution and its use to estimate chronic exposures is appropriate. Estimated risks range from 10% to 47% of the PAD. It is emphasized that the use of both highest tolerance level residues and the highest *in vivo* conversion factor results in dietary risk estimates that far exceed the likely actual risk.

iii. *Non-dietary exposure*. Triazole-derivative fungicides are registered for use on turf, resulting in the potential for residues of free triazole in grass and/or soil. Thus dermal and incidental oral exposures to children may occur. It is believed that residues of free triazole occur within the plant matrices and are not available as surface residues. Therefore, direct dermal exposure to 1,2,4-triazole due to contact with plants is not likely to occur. However, dermal exposure to parent fungicide and subsequent *in vivo* conversion to 1,2,4-triazole may occur. In order to account for this indirect exposure to free triazole, EPA used a conversion factor of 10%, which is the highest rate of *in vivo* conversion observed in rats for any of the triazole-derivative fungicides with registrations on turf. Incidental oral exposure may occur by direct and indirect routes. To assess direct exposure, EPA used a conversion factor of 17%, which is the highest rate of conversion to free triazole observed in any of the plant metabolism studies. As with indirect dermal exposure, EPA used a conversion factor of 10% in its assessment of indirect oral exposure. Based on residential exposure values estimated for propiconazole (0.0005 mg/kg/day via the dermal route and 0.03 mg/kg/day via the oral route) and the conversion factors described above, combined direct and indirect dermal exposures are estimated to be less than 0.0001 mg/kg/day and combined oral exposures are estimated to be less than 0.0019 mg/kg/day. The overall residential exposure is likely to be less than 0.0020 mg/kg/day. Relative to the 15 mg/kg/day point of departure, this gives an MOE of approximately 7,500 for children. Based on the current set of uncertainty factors, the target MOE is 1,000, indicating that the risk associated with residential exposure to 1,2,4-triazole for children is below EPA's level of concern. The adult dermal exposure estimate is slightly less than that of children. Incidental oral exposure is not expected to occur with adults.

iv. *Drinking water*. Modeled estimates of 1,2,4-triazole residues in surface water and ground water, as reported by the USTTF, and the DWLOC approach were used to address exposure to free triazole in drinking water. EECs of free triazole in ground water were obtained from the SCI-GROW model and range from 0.0 to 0.026 ppb, with the higher concentrations associated with uses on turf. Surface water EECs were obtained using the FIRST model. Acute surface water EECs ranged from 0.29 to 4.64 ppb for agricultural uses and up to 32.1 ppb from use on golf course turf. EPA notes that ground water monitoring studies in New Jersey and California showed maximum residues of 16.7 and 0.46 ppb, respectively, which exceed the SCI-GROW estimates significantly. Contrariwise, preliminary monitoring data from USDA's Pesticide Data Program for 2004 show no detectable residues of 1,2,4-triazole in any drinking water samples, either treated or untreated (maximum LOD = 0.73 ppb, n = 40 each).

v. *Aggregate exposure*. In estimating aggregate exposure, EPA combined potential dietary and non-dietary sources of 1,2,4-triazole. To account for the drinking water component of dietary exposure, EPA used the DWLOC approach, as noted above. The DWLOC represents a maximum concentration of a chemical in drinking water at or below which aggregate exposure will not exceed EPA's level of concern. In considering non-dietary exposure, EPA used the residential exposure estimate for children and applied it to all population subgroups. As previously noted, this estimate is considered to be highly conservative for children. Since adults are not expected to have non-dietary oral exposure to 1,2,4-triazole and that pathway makes up the majority of the residential exposure estimate for

children, application of that exposure estimate to adults is considered to be extremely conservative. Residential exposure is expected to occur for short-term and/or intermediate-term durations, and therefore is not a component in the acute or chronic aggregate exposure assessment. In order to assess aggregate short-term and intermediate-term exposure, EPA combined the residential exposure estimate and the background level of exposure to free triazole via food. Less than 1% of lawns in the U.S. are expected to be treated with triazole fungicides, so the likelihood of co-occurring dietary and residential exposures is very low.

With the exception of the acute DWLOCs for infants and children 1–6 years, all DWLOCs are greater than the largest EEC (surface water estimate from use on turf), indicating that aggregate exposures are not likely to exceed EPA's level of concern. Although the acute DWLOCs for infants and children 1–6 years indicate that aggregate exposure may exceed the aPAD of 0.015 mg/kg/day, EPA does not believe this to be the case due to the extremely conservative nature of the overall assessment (highest-tolerance level residues, 100% crop treated, 77% *in vivo* conversion factor). Furthermore, the drinking water monitoring data from the Pesticide Data Program found no detectable residues of either free triazole or parent triazole-derivative fungicide in its preliminary 2004 dataset, indicating that neither parent compounds nor 1,2,4-triazole are likely to occur in drinking water. For all exposure durations and population subgroups, EPA does not expect aggregate exposures to 1,2,4-triazole to exceed its level of concern.

The Agency is planning to conduct a more sophisticated human health assessment in early 2005 following submission and review of the ongoing toxicology and residue chemistry studies for 1,2,4-triazole.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There are no data gaps for the assessment of the effects of fenbuconazole following *in utero* and/or postnatal exposure; a developmental neurotoxicity study is not required. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fenbuconazole.

3. *Conclusion*. There is a complete toxicity data base for fenbuconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor (SF) could be removed (i.e., reduced to 1X) in assessing the risk posed by fenbuconazole for several reasons:

(i) There are no data gaps for the assessment of the effects of fenbuconazole following *in utero* and/or postnatal exposure; a developmental neurotoxicity study is not required.

(ii) There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fenbuconazole.

(iii) The dietary food exposure assessment utilizes conservative assumptions (tolerance level residues) with respect to residues in food. Although some %CT information was used for the chronic dietary food exposure assessment, 100% CT was assumed for the acute assessment. Together, these assumptions result in high-end estimates of dietary exposure and risk.

(iv) The dietary drinking water assessment (Tier 1 estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations;

(v) At this time, there are no registered residential uses for fenbuconazole; therefore, this type of exposure to infants and children is not expected.

E. Aggregate Risks and Determination of Safety

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

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 Liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fenbuconazole will occupy 0.9% of the aPAD for females 13 years and older, the only population subgroup for which an acute endpoint was identified. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FENBUCONAZOLE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13 - 49 years old	0.3	0.9	14.1	0.005	8,900

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenbuconazole from food will utilize 0.3% of the cPAD for the U.S. population, 1.3% of the cPAD for all infants, and 1.0% of the cPAD for children 1 to 2 years old. There are no residential uses for fenbuconazole that result in chronic residential exposure to fenbuconazole. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FENBUCONAZOLE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.03	0.3	7.3	0.005	1,000
All infants	0.03	1.3	7.3	0.005	300
Children 1 - 2 years old	0.03	1.0	7.3	0.005	300

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

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

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

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

5. *Aggregate cancer risk for U.S. population*. Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, DWLOC for cancer risk were calculated. To calculate the DWLOC, the chronic dietary food exposure for the overall U.S. population was subtracted from the exposure required to achieve a one in one million cancer risk (1×10^{-6}). Under FFDCA section 408, pesticides posing a negligible cancer risk can qualify as meeting section 408's reasonable certainty of no harm safety standard. EPA has traditionally interpreted a negligible cancer risk as a cancer risk in the range of a one in one million risk. Risks as high as three in one million have been regarded as in the range of one in one million. A value of 1×10^{-6} was used in calculating the DWLOC for fenbuconazole as a conservative, first-tier cancer risk assessment. The exposure required to achieve negligible risk is calculatedas $1 \times 10^{-6} \div Q1^* 0.00359$ $(mg/kg/day)^{-1}$. For cancer risk exposure, based on an adult body weight of 70 kg and 2L consumption of water per day, the estimated cancer DWLOC is 6.3 ppb for the U.S. population. EFED's 30–year average EEC of 5.9 ppb is lower than the cancer DWLOCs for the U.S. population. Therefore, the Agency concludes with reasonable certainty that, the aggregate cancer risk for fenbuconazole does not exceed the negligible risk standard (i.e., will not result in a cancer risk of greater than the range of 1×10^{-6}). The process is illustrated in Table 5.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (CANCER) EXPOSURE TO FENBUCONAZOLE

Population Subgroup	Negligible Exposure mg/kg/day	%PAD (Food)	Surface Water EEC (ppb)	Chronic Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.000279	0.3	5.9	0.005	6.3

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method for fenbuconazole in or on plants was submitted for inclusion in the Pesticide Analytical Manual Vol. 2 (PAM II).

B. International Residue Limits

There are Codex maximum residues levels (MRLs) expressed as fenbuconazole (fat-soluble) in milk, cattle meat, liver, kidney, and fat, all at 0.05 ppm (limit of quantitation, LOQ). Since the MRLs levels are based on different residue definitions and LOQs

than that of U.S. registrations, international harmonization is not feasible.

C. Response to Comments

A commenter raised several objections to the extension of time-limited tolerances for fenbuconzaole: (1) Complete data should be in before any approval is given by EPA; further, the Agency should not rely on limited evidence; (2) a 4–hour toxicity test is not a fair amount of time to test anything; (3) testing conducted on animals has absolutely no validity and is cruel to the test animals; and (4) the DEEM™ software is not suitable for evaluating risk.

These points will be addressed in turn.

1. *Missing data/limited evidence*. The commenter's mention of limited evidence appears to be a reference to the cancer potential for febuconazole. The carcinogenicity testing performed on fenbuconazole is complete and meets Agency scientific standards; however, the results of these tests are limited in that fenbuconazole does not appear to be a strong carcinogen. This evidence was taken into account in EPA's risk assessment and in making the safety determination. To the extent the commenter is concerned with the fact that there is limited information regarding 1,2,4-triazole, EPA would note that it more than compensated for the data limitations with regard to that chemical by making extremely conservative (i.e., health-protective) assumptions in assessing its risk.

2. *4–Hour toxicity test*. The Agency does not agree that the toxicity of pesticides can be judged by some undefined 4–hour toxicity test. Testing requirements for pesticides have been developed over many years following extensive review by the FIFRA Science Advisory Panel and many other scientific experts and groups, as well as exhaustive notice and comment rulemaking procedures. This comment is frivolous.

3. *Animal testing*. This commenter's objections to animal testing have been addressed in prior rulemaking documents. See 69 FR 63083, October 29, 2004.

4. *DEEM™ software*. The commenter provides no basis for claiming that the DEEM™ is unsuitable for risk assessment. For this reason alone, the comment is insignificant. EPA would note, however, that the DEEM™ software has been thoroughly tested by the Agency and has been reviewed by an independent body of technical experts, the FIFRA Scientific Advisory Panel, and found to be suitable for evaluating risks to pesticide residues on food. The results of that review may be found at*http://www.epa.gov/scipoly/sap/2000/ february/partialfinalreport06292000.pdf*.

D. Conditions

Time-limited tolerances were originally proposed for fenbuconazole because of several conditions of registration, namely the submission of the following items. Five additional studies had to be submitted: (1) Fish life cycle, (2) growth and reproduction of aquatic plants, (3) droplet size spectrum, (4) drift field evaluation, and (5) 49–month storage stability study. Several corrections to the labels were required. Mitigation measures to address chronic non-target organism toxicity concerns had to be identified and submitted. Production of the Indar 75 WSP product could not exceed 38,000 lb (28,500 lb active ingredient) for each year of conditional registration and information on its production had to be submitted for the first federal fiscal year during which fenbuconazole was registered for use on stone fruits and pecans. Production information had to be submitted for the Enable 2F product (EPA Registration Number 62719–416) for the first federal fiscal year during which this product was registered for use on pecans. The company has subsequently submitted studies, information, and corrected labels, and participated in task forces, intended to satisfy all these condition-of-registration requirements. All such submissions that have been reviewed have been found to satisfy the appropriate registration condition. However, the establishment of permanent tolerances for fenbuconazole depends upon the resolution of recent questions the Agency has raised regarding the toxicity of 1,2,4-triazole, triazolylalanine, and triazolyl acetic acid, metabolites common to the triazole class of fungicides. New data to address the Agency's questions about these compounds is being generated and will be reviewed by the Agency. However, the Agency has decided to extend the time-limited tolerances until such data are reviewed and the questions about 1,2,4-triazole, triazolylalanine, and triazolyl acetic acid have been resolved.

V. Conclusion

Therefore, the tolerance is established for the combined residues of fenbuconazole, [*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites *cis*- and*trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-*3H*-furanone, in or on banana (whole fruit) at 0.3 ppm; fruit, stone, group 12 (except plum, prune) at 2.0 ppm; pecan at 0.1 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0410 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 May 9, 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 VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0410, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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 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.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated:February 18, 2005

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.480 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.480 Fenbuconaozle; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/ revocation date
Banana (whole fruit)	0.3	12/31/08
Fruit, stone, group 12, except plums and prunes	2.0	12/31/08
Pecans	0.1	12/31/08

* * * * *

FR Doc. 05–4474 Filed 3–8–05; 8:45 am

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Chapter 3

Acquisition Regulation

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: The Department of Health and Human Services is correcting a direct final rule that appeared in the **Federal Register** on January 3, 2005 amending its acquisition regulation (HHSAR). Significant adverse comments were not received and the direct final rule became effective on March 4, 2005. The final rule is being corrected to address non-adverse comments received in response to the direct final rule.

DATE: *Effective Date:* Effective on March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Tracey Mock, Office of Acquisition Management and Policy, telephone (202) 205–4430, e-mail: *Tracey.Mock@hhs.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Health and Human Services issued a direct final rule on January 3, 2005 amending its acquisition regulation (HHSAR) and comments were due by February 2, 2005. Comments were received requesting (1) that contracts covered by the Service Contract Act not be excluded from the authority to write service contracts for a period of up to 10 years, (2) that the assignment of order numbers be up to seventeen digits, rather than requiring that all orders be comprised of seventeen digits, and (3) the redesignation of paragraphs pertaining to numbering acquisitions. The direct final rule, which became a final rule on March 4, 2005, is being corrected to reflect these comments.

List of Subjects in 48 CFR, Parts 304, 317, and 352.

Government procurement.

Dated: March 3, 2005.

Ed Sontag,

Assistant Secretary for Administration and Management.

■ Accordingly, 48 CFR chapter 3, parts 304, 317, and 352 are corrected as follows:

■ 1. The authority citation for 48 CFR chapter 3, parts 304, 317, and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 304—ADMINISTRATIVE MATTERS

304.7001 Numbering Acquisitions. [Amended]

■ 2. Redesignate paragraph 304.7001(d) as paragraph 304.7001(e).

■ 3. Redesignate paragraph 304.7001(c) as paragraph 304.7001(d).

■ 4. Revise paragraph (a) introductory text and add paragraph (c) of Section 304.7001 to read as follows:

304.7001 Numbering acquisitions.

a. *Acquisitions which require numbering.* The following acquisitions shall be numbered in accordance with the system prescribed in paragraphs (b), (c), and (d) of this section:

b. * * *

c. *Numbering system for orders.* Order numbers will be assigned to contracts with orders. The order number shall be up to a seventeen digit number consisting of the following:

(1) The three digit identification code of the Department (HHS);

(2) A one digit numeric identification code of the servicing agency:

O Office of the Secretary

P Program Support Center

M Centers for Medicare & Medicaid Services

F Food and Drug Administration

D Centers for Disease Control and Prevention

I Indian Health Service

S Substance Abuse and Mental Health Administration

N National Institutes of Health

H Health Resources and Services Administration

A Agency for Health Care Research and Quality;

(3) The three digit numeric identification code assigned by the Office of Acquisition Management and Policy (OAMP) to the contracting office within the servicing agency;

(4) An alphanumeric tracking number, up to ten characters, the content of which is determined by the contracting office within the servicing agency.

* * * * *

PART 317—SPECIAL CONTRACTING METHODS

■ 5. Correct section to read as follows:

317.204 Contracts

The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

352.224–70 [Amended]

■ 6. In 352.224–70 amend paragraph (g) by removing ''The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State, or local laws'' and adding ''The provisions of paragraph (d) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State, or local laws'' in its place.

[FR Doc. 05–4605 Filed 3–8–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041110317–4364–02; I.D. 030305D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Commercial summer flounder quota transfer from North Carolina to Virginia.

SUMMARY: NMFS announces that the State of North Carolina is transferring 243,292 lb (110,357 kg) of commercial summer flounder quota to the Commonwealth of Virginia from its 2005 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective March 4, 2005 through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Ruccio, Fishery Management Specialist, (978) 281–9104, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 2005 calendar year was set equal to 18,180,002 lb (8,246,395 kg). The percent allocated to vessels landing summer flounder in North Carolina is 27.44584 percent, and in Virginia is 21.31676 percent. This resulted in an initial commercial quota for North Carolina of 4,989,654 lb (2,263,292 kg), and for Virginia of 3,875,387 (1,757,864 kg) (70 FR 303, January 4, 2005). The 2005 allocation for North Carolina was further reduced to 4,932,017 lb (2,237,148 kg), and for Virginia to 3,830,622 lb (1,737,559 kg), due to research set-aside.

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 243,292 lb (110,357 kg) of its 2005 commercial quota to Virginia. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2005 are: North Carolina, 4,688,725 lb (2,126,806 kg); and Virginia, 4,073,914 lb (1,847,927 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: March 3, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–4607 Filed 3–4–05; 3:39 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 45
Wednesday, March 9, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[DHS No. 2004–0033]

RIN 1615–AA82

Petitions for Aliens To Perform Temporary Nonagricultural Services or Labor (H–2B)

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 27, 2005, at 70 FR 3984, U.S. Citizenship and Immigration Services published a proposed rule in the **Federal Register**, to provide a uniform review process governing petitions for aliens to perform temporary nonagricultural services or labor. To ensure that the public has ample opportunity to fully review and comment on the proposed rule, DHS has extended the comment period for this rule for an additional 30 days. This document informs the public that the comment period has been extended until April 8, 2005.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: You may submit comments, identified by RIN 1615–AA82 or DHS Docket DHS–2004–0033 by one of the following methods:

- *EPA Federal Partner EDOCKET Web site: http://www.epa.gov/feddocket.* Follow the instructions for submitting comments on the Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: rfs.regs@dhs.gov.* When submitting comments electronically, please include RIN 1615–AA82 or DHS–2004–0033 in the subject line of the message.
- *Mail/Hand-delivered/Courier:* Director, Regulatory Management Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

Instructions: All submissions received must include the DHS–2004–0033 or RIN 1615–AA82. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at Regulatory Management Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC, Monday through Friday, except Federal holidays. Arrangements to inspect submitted comments should be made in advance by calling (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Adjudications Officer, Office of Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 353–8177.

Richard A. Sloan,

Director, Regulatory Management Division.

[FR Doc. 05–4514 Filed 3–8–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines with certain part number (P/N) low pressure compressor (LPC) fan blades installed. That AD currently requires initial and repetitive ultrasonic inspections of the fan blade dovetail roots and defines a specific terminating action to the repetitive blade inspection requirements. This proposed AD would require the same actions but would clarify the terminating action. This proposed AD results from a request by an operator to clarify the terminating action in the existing AD. We are proposing this AD to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to the airplane.

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

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

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–17–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 Rolls-Royce plc, P.O. Box 31, Derby DE24 6BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936.

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: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2001–NE–17–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 January 3, 2005, we issued AD 2005–01–15, Amendment 39–13940 (70 FR 2336, January 13, 2005). That AD requires initial and repetitive ultrasonic inspections of the fan blade dovetail roots and defines a specific terminating action to the repetitive blade inspection requirements. That AD results from a report of a cracked fan blade found before the blade reached the initial inspection threshold of AD 2002–11–08. That AD also resulted from the need to reduce a repetitive inspection compliance time due to potential breakdown of blade coating and lubrication on certain blades.

Actions Since AD 2005–01–15 Was Issued

Since we issued AD 2005–01–15, we received a comment from an operator requesting that we clarify the terminating action in that AD. As the AD is currently written, LPC fan blades must be installed in complete sets to comply with the terminating action. We agree that the terminating action needs clarification. All blades must be replaced with blades that meet the replacement criteria to qualify as terminating action, but not necessarily replaced as a complete set. We have rewritten paragraph (h) in this proposed AD to address the commenter's request.

Relevant Service Information

We have reviewed and approved the technical contents of Rolls-Royce (RR) Alert Service Bulletin (ASB) No. RB.211–72–AD344, Revision 7, dated March 12, 2004, that provides procedures to ultrasonic-inspect the blade root on LPC fan blades. We have also reviewed and approved the technical contents of RR Service Bulletin (SB) No. RB.211–72–D672, dated February 1, 2002, that provides procedures to rework, relubricate, and remark the fan blades at fan blade overhaul, and lists part numbers for new fan blades that feature additional blade root processing requirements. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), classified these service bulletins as mandatory and issued AD G–2004–0008, dated April 29, 2004, in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Agreement Information

These engine models are manufactured in the UK and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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 the following:

- Require initial and repetitive ultrasonic-inspections of the dovetail roots of LPC fan blades P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175.
- Define a terminating action to the repetitive blade inspection requirements in the AD, to be done at the next shop visit when fan blades are removed, but no later than December 31, 2009. The terminating action would consist of replacing LPC fan blades with reworked, relubricated, and remarked LPC fan blades, using Rolls-Royce SB No. RB.211–72–D672, dated February 1, 2002, or with LPC fan blades that feature additional blade root processing requirements.

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

Costs of Compliance

There are about 350 RR RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines of the affected design in the worldwide fleet. We estimate that 90 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 8 work hours per engine to perform the proposed inspections, and about 260 work hours per engine to perform the proposed terminating action. The average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,567,800.

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. 2001–NE–17–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 39–13940 (70 FR 2336, January 13, 2005) and by adding a new airworthiness directive, to read as follows:

Rolls-Royce plc: Docket No. 2001–NE–17–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 9, 2005.

Affected ADs

(b) This AD revises AD 2005–01–15, Amendment 39–13940.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines with low pressure compressor (LPC) fan blades, part numbers (P/Ns) FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175, installed. These engines are installed on, but not limited to, Boeing Company 777 series airplanes.

Unsafe Condition

(d) This AD results from a request by an operator to clarify the terminating action in AD 2005–01–15. We are issuing this AD to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible 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.

(f) Ultrasonic-inspect and disposition the dovetail roots of LPC fan blades, P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175, that are removed from the engine, using 3.A.(1) through 3.A.(5) or, for blades that are not removed from the engine, using 3.B.(1) through 3.B.(5) of the Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211–72–AD344, Revision 7, dated March 12, 2004, as follows:

(1) For blades P/Ns FK30838, FK30840, and FK30842, that have not been relubricated during any interval exceeding 600 cycles-since-new (CSN) or 600 cycles-since-rework (CSR) using either RR ASB No. RB.211–72-AD344 or Service Bulletin (SB) No. RB.211–72–D347, inspect as specified in paragraph (f) of this AD and within the compliance times specified in the following Table 1:

TABLE 1.—COMPLIANCE TIMES FOR BLADES P/NS FK30838, FK30840, AND FK30842

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection (cycles-since-last-inspection) (CSLI)
(i) –884B, –892	–300	(A) 660 and 632.5	600	80
		(B) 580	2,000	600
(ii) –884, –892, –892B, and –895	–200	(A) 632.5 and 648	1,200	100
		(B) 656	600	80
		(C) 555	2,000	600
(iii) –875	–200	535	2,000	600
(iv) –877	–200	545	2,000	600

(2) For blades P/Ns FK30838, FK30840, and FK30842, that have been relubricated at intervals not exceeding 600 CSN or 600 CSR using either RR ASB No. RB.211–72–AD344 or SB No. RB.211–72–D347, inspect as specified in paragraph (f) of this AD and within the compliance times specified in the following Table 2:

TABLE 2.—COMPLIANCE TIMES FOR BLADES P/NS FK30838, FK30840, AND FK30842

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(i) –884B, 892	–300	(A) 660 and 632.5	600	80
		(B) 580	2,400	600
(ii) –884, –892, –892B, and –895	–200	(A) 632.5 and 648	1,200	100
		(B) 656	600	80
		(C) 555	2,400	600
(iii) –875	–200	535	2,400	600
(iv) –877	–200	545	2,400	600

(3) For blades P/Ns FW12960, FW12961, FW12962, and FW13175, either new or reworked to that configuration at greater than 600 CSN or since previous rework, or that have not been relubricated during any interval exceeding 600 CSN or 600 CSR using either RR ASB No. RB.211–72–AD344 or SB No. RB.211–72–D347 requirements, inspect as specified in paragraph (f) of this AD and within the compliance times specified in the following Table 3:

TABLE 3.—COMPLIANCE TIMES FOR BLADES P/NS FW12960, FW12961, FW12962, AND FW13175

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(i) –884B, –892	–300	(A) 660 and 632.5	600	100
		(B) 580	2,000	600
(ii) –884, –892, –892B and –895	–200	(A) 632.5 and 648	1,200	125
		(B) 656	600	100
		(C) 555	2,000	600
(iii) –875	–200	535	2,000	600
(iv) –877	–200	545	2,000	600

(4) For blades P/Ns FW12960, FW12961, FW12962, and FW13175, either new or reworked to that configuration at fewer than 600 CSN or since previous rework, and that have been relubricated at intervals not exceeding 600 CSN using either RR ASB No. RB.211–72–AD344 or SB No. RB.211–72–D347, inspect as specified in paragraph (f) of this AD and within the compliance times specified in the following Table 4:

TABLE 4.—COMPLIANCE TIMES FOR BLADES P/NS FW12960, FW12961, FW12962, AND FW13175

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(i) –884B, –892	–300	(A) 660 and 632.5	600	100
		(B) 580	2,400	1,200
(ii) –884, –892, –892B, and –895	–200	(A) 632.5 and 648	2,400	125
		(B) 656	600	100
		(C) 555	2,400	1,200
(iii) –875	–200	535	2,400	1,200
(iv) –877	–200	545	2,400	600

(g) When engines containing blades P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175 are moved from one gross weight category to another, the inspection schedule that is applicable to the higher gross weight category must be used.

Terminating Action

(h) As terminating action to the repetitive inspection requirements of this AD, at the next shop visit when the LPC fan blades are removed for repair or overhaul, but no later than December 31, 2009:

(1) Replace LPC fan blades P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, or FW13175, with serviceable LPC fan blades.

(2) For the purposes of this AD, serviceable LPC fan blades are blades that feature additional blade root processing requirements found in RR SB No. RB.211–72–D672, dated February 1, 2002; or are LPC fan blades that feature a full form root profile. Information on full form root profile blades can be found in RR SB No. RB.211–72–D390, RR SB No. RB.211–72–E044, and RR SB No. RB.211–72–E382.

Previous Credit

(i) Previous credit is allowed for initial inspections of fan blades that were done using RR ASB No. RB.211–72–AD344, Revision 4, dated March 15, 2002, Revision 5, dated June 20, 2003, Revision 6, dated February 27, 2004, or Revision 7, dated March 12, 2004, before the effective date of this AD.

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.

Related Information

(k) Civil Aviation Authority (CAA) airworthiness directive G–2004–0008, dated April 29, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on March 2, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–4561 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19693; Directorate Identifier 2004–CE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Kelly Aerospace Power Systems Part Number (P/N) 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, C23D04, or P23D04 Fuel Regulator Shutoff Valves (formerly owned by ElectroSystems, JanAero Devices, Janitrol, C&D Airmotive Products, FL Aerospace, and Midland-Ross Corporation)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise Airworthiness Directive (AD) 2004–25–16, which applies to aircraft equipped with a fuel regulator shutoff valve part number (P/N) 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, C23D04, or P23D04 used with B1500,

B2030, B2500, B3040, B3500, B4050, or B4500 B–Series combustion heaters. AD 2004–25–16 currently requires you to repetitively inspect the fuel regulator shut shutoff valve (visually or by pressure test) for fuel leakage and replace the fuel regulator shutoff valve with an improved design replacement part with a manufacturer's date code of 02/02 or later if fuel leakage is found. AD 2004–25–16 also allows you to disable the heater as an alternative method of compliance. Since we issued AD 2004–25–16, we received several comments requesting a revision to paragraph (e)(2). Consequently, this proposed AD retains the actions required in AD 2004–25–16 and revises the requirements in paragraph (e)(2) to remove a required action. We are issuing this proposed AD to prevent failure of the fuel regulator shutoff valve, which could result in fuel leakage in aircraft with these combustion heaters. This failure could result in an aircraft fire.

DATES: We must receive any comments on this proposed AD by April 7, 2005.

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

- *DOT Docket web site:* Go to http://dms.dot.gov and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Kelly Aerospace Power Systems, P.O. Box 273, Fort Deposit, Alabama 36032; telephone: (334) 227–8306; facsimile: (334) 227–8596; Internet: *http://www.kellyaerospace.com.*

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2004–19693; Directorate Identifier 2004–CE–40–AD.

FOR FURTHER INFORMATION CONTACT: Kevin L. Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6063; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19693; Directorate Identifier 2004–CE–40–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19693. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

Has FAA taken any action to this point? Reports of certain regulator shutoff valves leaking caused FAA to issue AD 2001–08–01, Amendment 39–12178 (66 FR 19718, April 17, 2001). AD 2001–08–1 required you to visually inspect and pressure test the fuel regulator shutoff valves for leaks and replace the fuel regulator shutoff valve if leaks were found.

The affected fuel regulator shutoff valves are part of the B1500, B2030, B2500, B3040, B3500, B4050, or B4500 combustion heater configuration.

Operators of aircraft with the affected fuel regulator shutoff valves installed and mechanics who did the actions of AD 2001–08–01 provided suggestions for improvement to the AD. Based on that feedback, FAA superseded AD 2001–08–01 with AD 2001–17–13, Amendment 39–12404 (66 FR 44027, August 22, 2001).

AD 2001–17–13 retained the actions of AD 2001–08–01, except it requires only the visual inspection or the pressure test of the fuel regulator shutoff valves (not both) and lists the affected fuel regulator shutoff valves by part number instead of series. AD 2001–17–13 also included a provision for disabling the heater as an alternative method of compliance.

The FAA continued to receive reports of problems with these fuel regulator shutoff valves. This service history reflects that the inspections should be repetitive instead of one-time. Based on this information, FAA superseded AD 2001–17–13 with AD 2004–25–16, Amendment 39–13904 (69 FR 75228, December 16, 2004).

AD 2004–25–16 retains the actions required in AD 2001–17–13, makes the inspection repetitive, and requires installing improved design replacement parts.

What has happened since AD 2004–25–16 to initiate this proposed AD action? We inadvertently retained an action from AD 2001–17–13 and made it repetitive. After each inspection of the fuel regulator shutoff valve for signs of fuel leaks and no leaks are found, AD 2004–25–16 requires the valve cover to be marked with the date of inspection.

Since AD 2004–25–16 made that inspection repetitive, it is not feasible to mark the valve cover with the date of each inspection. Therefore, we are proposing to revise AD 2004–25–16 to remove this action.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in fuel leakage in aircraft with these combustion heaters, which could result in an aircraft fire with consequent damage or destruction.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would revise AD 2004–25–16 with a new AD that would retain the actions required in AD 2004–25–16 and removes the requirement to mark the valve cover with the date of inspection as specified in paragraph (e)(2) of the AD.

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

Costs of Compliance

What is the cost impact of this proposed revision? Since we are proposing to revise AD 2004–25–16 to remove a required action from the previous AD, there is no cost impact for this proposed revision.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19693; Directorate Identifier 2004–CE–40–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 Airworthiness Directive (AD) 2004–25–16, Amendment 39–13904 (69 FR 75228), and by adding a new AD to read as follows:

Kelly Aerospace Power Systems (formerly owned by ElectroSystems, JanAero Devices, Janitrol, C&D Airmotive Products, FL Aerospace, and Midland-Ross Corporation): Docket No. FAA–2004–19693; Directorate Identifier 2004–CE–40–AD; Revises AD 2004–25–16; Amendment 39–13904.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by April 7, 2005.

What Other ADs Are Affected by This Action?

(b) This AD revises AD 2004–25–16, Amendment 39–13904.

What Airplanes Are Affected by This AD?

(c) This AD applies to aircraft equipped with a fuel regulator shutoff valve part number (P/N) 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, C23D04, or P23D04 used with B1500, B2030, B2500, B3040, B3500, B4050, or B4500 B–Series combustion heaters. The following is a list of aircraft where the B–Series combustion heater could be installed. This is not a comprehensive list and aircraft not on this list that have the heater installed through field approval or other methods are still affected by this AD:

Manufacturer	Aircraft models/series
(1) Bombardier Inc	CL–215, CL–215T, and CLT–415.
(2) Cessna Aircraft Company	208, T303, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 310Q, 320C, 320D, 320E, 320F, 337 Series, 340, 340A, 414, 414A, 421, 421A, 421B, and 421C.
(3) The New Piper Aircraft, Inc	PA–23 Series, PA–30, PA–31 Series, PA–34 Series, PA–39, and PA–44 Series.
(4) Raytheon Aircraft Corporation	95–B55 Series, 58, 58TC, 58P, 60, A60, and 76.

Note 1: The B1500, B2030, B2500, B3040, B3500, B4050, or B4500 B–Series combustion heaters were previously manufactured by Janitrol, C&D Airmotive Products, FL Aerospace, and Midland-Ross Corporation.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of numerous reports of fuel regulator shutoff valves

leaking fuel. We are issuing this AD to prevent failure of the fuel regulator shutoff valve, which could result in fuel leakage in aircraft with these combustion heaters. This failure could result in an aircraft fire.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Visually inspect or pressure test the fuel regulator shutoff valve for any signs of fuel leaks.	Within the next 25 hours aircraft time-in-service (TIS) after January 5, 2005 (the effective date of AD 2004–25–16), unless already done within the last 75 hours aircraft TIS (*e.g.*, compliance with AD 2001–08–01 or 2001–17–13). Repetitively inspect thereafter at intervals not to exceed 100 hours aircraft TIS or 12 months, whichever occurs first. This is established to coincide with 100-hour and annual inspections.	Locate the pressure regulator shutoff value in the installation using the applicable maintenance manual for valve location, removal, and installation instructions. Follow the procedures in Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002, for the visual inspection or the pressure test.
(2) If no fuel leaks or no signs of fuel stains are found during each inspection required by paragraph (e)(1) of this AD, make a log book entry with the date of inspection (month/year).	Prior to further flight after each inspection required in paragraph (e)(1) of this AD.	Follow the procedures in Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002.
(3) If any signs of fuel leaks or any signs of fuel stains are found during any inspection required in paragraph (e)(1) of this AD, replace the valve with a new valve of appropriate part number (P/N) that has a manufacturer's date code of 02/02 or later. For Piper PA–31–350 model aircraft, replace P/N A23D04–7.5 valve with P/N P23D04–7.5 Ensure there are no fuel leaks in the replacement valve by following the inspection and documentation requirements in paragraphs (e)(1) and (e)(2) of this AD.	Before further flight after the inspection where any fuel leak was found.	Follow Kelly Aerospace Power Systems Service Bulletin No. A–107A, Issue Date: September 6, 2002; Piper Vendor Service Publication VSP–150, dated January 31, 2003; and the applicable maintenance manual.
(4) As an alternative method of compliance to this AD, you may disable the heater provided you immediately comply with the inspection, identification, and replacement requirements of this AD when you bring the heater back into service. Do the following actions when disabling: (i) Cap the fuel supply line upstream of the fuel regulator and shutoff valve;. (ii) Disconnect the electrical power and ensure that the connections are properly secured to reduce the possibility of electrical spark or structural damage;. (iii) Inspect and test to ensure that the cabin heater system is disabled;. (iv) Ensure that no other aircraft system is affected by this action; ..... (v) Ensure there are no fuel leaks; and ..... (vi) Fabricate a placard with the words: "System Inoperative". Install this placard at the heater control valve within the pilot's clear view..	If you choose this option, you must do it before the next required inspection specified in paragraph (e)(1) of this AD. To bring the heater back into service, you must do the actions of paragraphs (e)(1), (e)(2), and (e)(3) of this AD (inspection, identification, and replacement, as necessary).	Not Applicable.
(5) Only install a fuel regulator shutoff valve with a manufacture date code of 02/02 or later.	As of January 5, 2005 (the effective date of AD 2004–25–16).	Not Applicable.

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.

(1) 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, Manager, Atlanta ACO, FAA. For information on any already approved alternative methods of compliance, contact Kevin L. Brane, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6063; facsimile: (770) 703–6097.

(2) Alternative methods of compliance approved for AD 2004–25–16, which is revised by this AD, are approved as alternative methods of compliance with this AD.

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

(g) To get copies of the documents referenced in this AD, contact Kelly Aerospace Power Systems, P.O. Box 273, Fort Deposit, Alabama 36032; telephone: (334) 227–8306; facsimile: (334) 227–8596; Internet: *http://www.kellyaerospace.com*. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19693; Directorate ID 2004–CE–40–AD.

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

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4556 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB36

Post-Adjudication Audits of H–2B Petitions in All Occupations Other Than Excepted Occupations in the United States; Re-Opening and Extension of Comment Period

AGENCIES: Employment and Training Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document informs the public that the comment period for the Notice of Proposed Rulemaking for Post-Adjudication Audits of H–2B Petitions in All Occupations Other Than Excepted Occupations in the United States is re-opened and extended.

DATES: The comment period for the notice of proposed rulemaking published January 27, 2005 (70 FR 3993), has been extended until April 8, 2005.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB36, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *E-mail:* Comments may be submitted by e-mail to *H2B.Comments@dol.gov*. Include RIN 1205–AB36 in the subject line of the message.
- *U.S. Mail:* Submit written comments to the Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC, is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205–AB36 for this rulemaking. Receipt of submissions will not be acknowledged because DOL continues to experience occasional delays in receiving postal mail in the Washington, DC, area; commenters using mail are encouraged to submit any comments early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (*e.g.*, large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693–3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: An H–2B nonimmigrant is admitted temporarily to the United States to perform temporary nonagricultural labor or services. On January 27, 2005, the Department of Labor's Employment and Training Administration (DOL or ETA) and the Department of Homeland Security (DHS) simultaneously published in the **Federal Register** proposed rules to change the procedures for the issuance of H–2B visas. 70 FR 3984 and 3993. Under DOL's proposed rule, H–2B petitions filed with DHS, with the exception of workers in logging, the entertainment industry, or professional athletics, will require employers to satisfy specific attestations concerning labor market issues. These attestations have been developed by the DOL and are included in DOL's proposed rule and incorporated in the DHS proposed regulation. In addition, under the proposed rule, the DOL will receive information on petitions that have been approved and received final adjudication from the DHS. The DOL will be conducting post-adjudication audits of attestations submitted in support of selected approved H–2B petitions received from the DHS. Given the complexity of the proposed rule and the intense level of interest, the comment period is being re-opened and extended.

DOL published its notice of proposed rulemaking in the **Federal Register** of January 27, 2005 (FR Doc. 05–1222), at 70 FR 3993. The notice invited interested persons to submit written comments on the proposed rule on or before February 28, 2005. This document re-opens and extends the comment period through April 8, 2005.

Signed in Washington, DC, this 3rd day of March 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–4534 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000 and 4007

RIN 1212–AB02

Electronic Premium Filing

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The PBGC proposes to require electronic filing of premium declarations. The requirement would become effective for plans with 500 or more participants starting with the 2006 plan year and for smaller plans starting with the 2007 plan year. Plans could apply to the PBGC for exemptions on a case-by-case basis. The PBGC has instituted an on-line e-filing facility (''My Plan Administration Account,'' or ''My PAA''), and during 2005 will upgrade My PAA to accept electronic filings made with the use of vendor or proprietary software.

DATES: Comments must be received on or before May 9, 2005.

ADDRESSES: Comments may be mailed or delivered to the Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/regs*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov*. Copies of the comments may also be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: James J. Armbruster, Acting Director, or Deborah C. Murphy, Attorney, Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service

toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: This proposed rule is part of an ongoing implementation of the Government Paperwork Elimination Act by the Pension Benefit Guaranty Corporation (''PBGC'') and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule addresses electronic submission of premium filings required under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007) and builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA''). Pension plans covered by Title IV must pay annual premiums to the PBGC. Premium filings must include information to identify the plans for which premiums are paid and to demonstrate that the amounts paid are correct.

The PBGC has been processing premium filings for 30 years. The volume of filings processed annually is in the tens of thousands. Processing methods have become progressively more automated, and the PBGC now uses specially designed premium forms that can be read by optical character recognition (''OCR'') devices. Even with OCR, however, the PBGC has found that the capture of data from paper premium forms and its translation into electronic data files is an imperfect process that inevitably gives rise to errors that can be difficult and burdensome to detect and correct. These errors cause problems for both the PBGC and premium filers, because they can lead to the issuance of improper bills for premiums that have in fact been paid, to delays in the processing of refund requests, to erroneous filing histories, etc.

Consistent with the Government Paperwork Elimination Act, and with a view to reducing problems of this kind, the PBGC introduced optional electronic premium filing for plan years beginning in 2004 using a facility on its Web site (*www.pbgc.gov*) called ''My Plan Administration Account'' (''My PAA''). To make a premium filing using My PAA, a plan administrator or other pension practitioner logs onto a secure account on the PBGC's Web site and enters necessary information in on-line forms screens. My PAA enables practitioners to route premium filings among themselves electronically for the addition of information and for electronic certification and to submit completed filings to the PBGC with the click of a mouse. The information submitted can be loaded directly into the PBGC's data processing systems, thus eliminating the errors inherent in the OCR data capture process. Premium payments are also made on line as part of the filing process.

My PAA streamlines the premium filing process for users, and it makes the PBGC's processing of premium filings faster and more accurate. Thus it has the potential to reduce the number of erroneous bills, to speed up refund processing, and in general to improve significantly the PBGC's ability to perform its premium collection functions while enhancing service to premium payers.

The PBGC is now engaged in a project to create another premium e-filing method, to be operational in mid-2005, to accommodate pension practitioners who may prefer to continue using private sector software—either purchased annually from a commercial developer or developed ''in-house''—for preparing premium filings. The PBGC will issue standards for structuring a computer file containing premium filing information; by incorporating those standards into their software, developers will give software users the ability to create premium data files that they will be able to upload to the PBGC through the PBGC's web site (probably through the existing My PAA portal). Using this new method, practitioners will be able to prepare premium filing information using their own software and then put the information into files that meet PBGC formatting standards and electronically transmit them to the PBGC. The PBGC expects to continue accepting premium payments from such filers in the same way it does now, by paper check, wire transfer, or Automated Clearing House.

Against this background, the PBGC is proposing to eliminate paper premium forms and to require electronic filing of annual premium information submissions for large plans (those with 500 or more participants) for plan years beginning after 2005 and for all plans for plan years beginning after 2006. The PBGC would grant case-by-case exemptions to the electronic filing requirement in appropriate circumstances for filers that demonstrated good cause for exemption. (The submission of information specially requested by the PBGC in connection with a premium compliance review would not be affected by this change, nor would there be a requirement for payment to be made electronically.)

The PBGC invites public comment on this proposal, including the 500-participant cutoff that is used to determine whether a plan is required to begin e-filing in 2006 or 2007 (and is also used to determine whether a plan must pay the flat-rate premium early under 29 CFR 4007.11(a)(2), whether contributions may or must be included in assets under 29 CFR 4006.4(b)(2)(iv) in determining the variable-rate premium, whether significant events must be taken into account under 29 CFR 4006.4(d) when using the alternative calculation method for the variable-rate premium, whether a fully funded plan qualifies for a variable-rate premium exemption under 29 CFR 4006.5(a)(1), and whether a plan may base its variable-rate premium on accrued rather than vested benefits under 29 CFR 4006.5(b)).

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget (''OMB''), that this proposed rule is a ''significant regulatory action'' under Executive Order 12866. OMB has therefore reviewed this proposed rule under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. The PBGC expects electronic premium filing to be no more burdensome than paper filing for filers generally and will grant exemptions from the electronic filing requirement for good cause in appropriate circumstances. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

The PBGC is submitting the information requirements contained in this proposed rule to OMB for review and approval under the Paperwork Reduction Act. Copies of the PBGC's request may be obtained free of charge by contacting the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, 202–326–4040. This proposed rule would modify paperwork collections under both part 4000 (OMB control number 1212–0059) and part 4007 (OMB control number 1212–0009).

The PBGC needs the information required to be submitted under part 4007 to identify the plans for which

premiums are paid and to determine whether the amounts paid are correct.

The PBGC estimates that it will receive premium filings annually from about 28,900 plan administrators and that the total annual burden of the collection of information will be about 3,478 hours and $18,172,550. (These estimates include paper and electronic filings.)

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Although comments may be submitted through May 9, 2005, the Office of Management and Budget requests that comments be received on or before April 8, 2005 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, the PBGC proposes to amend 29 CFR parts 4000 and 4007 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

2. In § 4000.3, paragraph (a) is amended by removing ''You may file'' and adding in its place ''Except for premium declarations, you may file; by redesignating paragraph (b) as paragraph (c) and revising its heading to read ''Information on electronic filings.''; and by adding a new paragraph (b) to read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) *Required electronic filings.* You must file premium declarations electronically except to the extent that the PBGC grants an exemption for good cause in appropriate circumstances.

(1) This electronic filing requirement applies to filings for—

(i) Plan years beginning after 2005 for plans that were required to pay premiums for 500 or more participants for the plan year preceding the premium payment year and

(ii) Plan years beginning after 2006 for all other plans.

(2) This electronic filing requirement does not apply to information you file to comply with a request we make under § 4007.10(c) of this chapter (dealing with providing record information in connection with a premium compliance review).

3. In § 4000.4, remove the last sentence and add two new sentences in its place to read as follows:

§ 4000.4 Where do I file my submission?

* * * You do not have to provide an address for electronic premium submissions made through our web site. We are responsible for ensuring that such submissions go to the proper place.

4. In § 4000.23, add a new sentence at the end of paragraph (a) and at the end of paragraph (b)(3) to read as follows:

§ 4000.23 When is my submission or issuance treated as filed or issued?

(a) * * * A submission made through our web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) * * *

(3) * * * A submission made through our web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

5. In § 4000.29, add three new sentences at the end of paragraph (a) introductory text to read as follows:

§ 4000.29 What if I use electronic delivery?

(a) * * * A submission made through our web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to provide an address for electronic premium submissions made through our web site. We are responsible for ensuring that such submissions go to the proper place.

* * * * *

PART 4007—PAYMENT OF PREMIUMS

6. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

7. Section 4007.3 is revised to read as follows:

§ 4007.3 Filing requirement; method of filing.

The estimation, declaration, reconciliation, and payment of premiums shall be made in accordance with the instructions posted on the PBGC's Web site (*www.pbgc.gov*). No later than the applicable due date specified in § 4007.11, the plan administrator of each covered plan shall file in the prescribed format the prescribed information and any premium payments due. Information must be filed electronically except to the extent that the PBGC grants an exemption for good cause in appropriate circumstances. The requirement to file electronically applies to filings for plan years beginning after 2005 for plans that were required to pay premiums for 500 or more participants for the plan year preceding the premium payment year and to filings for plan years beginning after 2006 for all other plans. (The requirement to file electronically does not apply to information filed to comply with a PBGC request under § 4007.10(c) (dealing with providing record information in connection with a premium compliance review).)

8. Section 4007.4 is revised to read as follows:

§ 4007.4 Where to file.

See § 4000.4 of this chapter for information on where to file.

Issued in Washington, DC, this 3rd day of March, 2005.

Bradley D. Belt,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–4536 Filed 3–8–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17–05–002]

RIN 1625–AA11 and 1625–AA87

Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones in the navigable waters of Coast Guard District 17 around and under all high capacity passenger (HCP) vessels. The zones would extend 100 yards from HCP vessels while they are underway and 25 yards from HCP vessels while they are moored or anchored. The Coast Guard also proposes to establish a regulated navigation area that would require other vessels operating within 250 yards of a HCP vessel be subject to speed restrictions. These security zones and regulated navigation area are needed to secure and safeguard HCP vessels and ports from sabotage, terrorist acts, and other incidents. Entry into these security zones would be prohibited, unless specifically authorized by the Coast Guard District 17 Commander, cognizant Captain of the Port, or the on-scene official patrol.

DATES: Comments and related material must reach the Coast Guard on or before April 8, 2005.

ADDRESSES: You may mail comments and related material to District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801. District 17 (MOC) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Matthew York, District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801, (907) 463–2821.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD17–05–002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to District 17 (MOC) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS COLE and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States.

In its effort to thwart terrorist activity, the Coast Guard has increased security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

Due to increased awareness of the potential for future terrorist attacks, the Coast Guard, as lead Federal agency for maritime homeland security, has determined that the Coast Guard District Commander and Captain of the Port (COTP) must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a high capacity passenger (HCP) vessel, such as a cruise ship, would have on the public interest, the Coast Guard is proposing to establish a moving and a fixed security zone in the navigable waters of Coast Guard District 17 around and under all high capacity passenger (HCP) vessels extending 100 yards from the vessels while they are underway and extending 25 yards from the vessels while they moored or anchored. The Coast Guard also proposes that other vessels operating within 250 yards of a HCP vessel be subject to speed restrictions and other orders as necessary to provide the Coast Guard with an enhanced ability to manage vessel traffic in the vicinity of HCP vessels and deter potential sabotage, terrorist acts, or other incidents involving HCP vessels. These security zones are needed to secure and safeguard HCP vessels and ports from

sabotage, terrorist acts, and other incidents. Entry into this security zone would be prohibited, unless specifically authorized by the Coast Guard District 17 Commander, cognizant COTP, or the on-scene official patrol. The proposal also provides that the Coast Guard District 17 Commander, cognizant COTP, or on-scene official patrol may be assisted by other Federal, State, or local government agencies in enforcing these security zones.

Discussion of Proposed Rule

This proposed rule would control vessel movement in a regulated area surrounding high capacity passenger (HCP) vessels to address security concerns. It would prohibit persons or vessels from entering a security zone that extends 100 yards around and under HCP vessels that are underway and 25 yards around and under HCP vessels that are anchored or moored within the Coast Guard District 17 zone, except as noted in this regulation.

For the purpose of this regulation, HCP vessels are those vessels of U.S. or foreign registry, certificated to carry 500 passengers or more. Public vessels are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof. For the purpose of this regulation, Alaska Marine Highway vessels are not HCP vessels. The passengers and crew of the respective HCP vessel are persons not subject to this regulation. Public vessels, vessels working on behalf and at the direction of the HCPs (*i.e.*, local transport of passengers, tender vessels, etc.), or vessels granted waiver or permission by the 17th Coast Guard District Commander, cognizant Captain of the Port (COTP), or on-scene official patrol are vessels not subject to this regulation.

Vessels requesting to enter the security zone must contact the Coast Guard District 17 Commander, his or her designated representatives, the cognizant COTP, or on-scene official patrol on VHF-FM channel 16 or 13. The Coast Guard District 17 Commander, the cognizant COTP, or on-scene official patrol may permit vessels to enter the security zone if it is necessary to ensure a safe passage in accordance with the Navigation Rules or for other good cause. Similarly, all vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of a passing HCP vessel.

All vessels operating within 250 yards of a HCP vessel in the RNA must proceed at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the navigation rules. All persons and vessels within 250 yards of a HCP vessel in the RNA must be attentive to and comply with the orders of the District Commander, cognizant COTP, or designated on-scene official patrol.

Regulatory Evaluation

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

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

Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule will not be significant because: (i) The individual HCP vessel security zones are limited in size; (ii) the Coast Guard District 17 Commander, his or her designated representatives, the cognizant Captain of the Port, or on-scene official patrol may permit vessels to enter the security zone if it is necessary to ensure a safe passage in accordance with the Navigation Rules or for other good cause; (iii) the Coast Guard District 17 Commander or cognizant Captain of the Port may grant waivers to certain vessels or classes of vessels under this proposal; (iv) the HCP vessel security zone for any particular transiting HCP vessel will effect a given geographical location for a limited time; and, (v) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of HCP vessels in the navigable waters of Alaska.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The individual HCP vessel security zones are limited in size; (ii) the Coast Guard District 17 Commander, his or her designated representatives, the cognizant Captain of the Port, or on-scene official patrol may permit vessels to enter the security zone if it is necessary to ensure a safe passage in accordance with the Navigation Rules or for other good cause; (iii) the Coast Guard District 17 Commander or cognizant Captain of the Port may grant waivers to certain vessels or classes of vessels under this proposal; (iv) the HCP vessel security zone for any particular transiting HCP vessel will effect a given geographical location for a limited time; and, (v) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Matthew York, District 17 (MOC) at (907) 463–2821. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1711 to read as follows:

§ 165.1711 Regulated Navigation Area and Security Zones; Protection of High Capacity Passenger Vessels in Alaska.

(a) *Definitions.* As used in this section—

Cognizant Captain of the Port or cognizant COTP means the Captain of the Port (COTP) or his or her designated representatives with authority over the relevant body of water. There are three COTPs in the District 17: Southeast Alaska, Western Alaska, and Prince William Sound. The boundaries for these three COTP zones are described, respectively, in 33 CFR 3.85–10, 3.85–15, and 3.85–20.

District 17 Commander means the Coast Guard District Commander for the Coast Guard District 17 or his or her designated representatives. The boundaries for the Coast Guard District 17 are described in 33 CFR 3.85–1.

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

High capacity passenger (HCP) vessel means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

Navigation rules mean international and inland navigation rules in 33 CFR chapter I, subchapters D and E.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Official Patrol means those persons designated by the District Commander or cognizant COTP to monitor a HCP vessel security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the COTP. Persons authorized in paragraph (e) of this section to enforce this section are designated as the Official Patrol.

State Law Enforcement Officer means any peace officer as defined in Alaska Statute § 01.10.060.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except public vessels.

(b) *Location.* (1) *Regulated navigation area.* The following area is a regulated navigation area (RNA): All navigable waters of United States within the boundaries of the Coast Guard District 17(Alaska).

(2) *Security zone.* A security zone is established around and under, and is centered on, each high capacity passenger (HCP) vessel within the RNA described in paragraph (b)(1) of this section, and extends l00 yards from the vessel while it is underway and 25 yards from the vessel while it is moored or anchored. A security zone enforced when a HCP vessel enters the RNA and remains enforced until the HCP vessel leaves the RNA. This is a moving security zone when the HCP vessel is in transit and a fixed zone when the HCP vessel is moored or anchored. A security zone will not extend beyond the boundary of the RNA in this section.

(c) *Regulations.* (1) Under 33 CFR 165.33, no person or vessel may enter into the security zones established under this section unless authorized by the Coast Guard District 17 Commander, the cognizant Captain of the Port, or the on-scene official patrol.

(2) When a HCP vessel in the RNA approaches within 100 yards of a vessel that is moored or anchored in a designated anchorage area, the stationary vessel must stay moored or anchored while it remains within the HCP vessel's security zone unless it is either ordered by or given permission from the Coast Guard District 17 Commander, the cognizant Captain of the Port, or the on-scene official patrol to do otherwise.

(3) The COTP will inform the public of the existence of security zone around and under HCP vessels in the RNA by Marine Safety Information Broadcasts.

(4) Vessels that seek to enter a security zone or exceed speed limits established in this section, may contact the on-scene official patrol (if there is one) or the cognizant COTP to request permission.

(5) A vessel in the RNA operating within 250 yards of a HCP vessel must proceed at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the navigation rules. All persons and vessels within 250 yards of a HCP vessel in the RNA must be attentive to and comply with the orders of the District Commander, cognizant COTP, or designated on-scene official patrol.

(6) When conditions permit, the District Commander, cognizant COTP, or designated on-scene official patrol should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter the security zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Grant waiver of any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of security, safety, or environmental safety. Applications for waiver should be directed initially to the cognizant COTP. To be effective, all waivers must be granted in writing by the District Commander or cognizant COTP.

(d) *Contact information.* (1) Vessels seeking permission under paragraphs (c)(2), (c)(4), or (c)(6) of this section should contact the cognizant COTP or on-scene official patrol to make a timely request.

(2) The on-scene official patrol (if there is one) or the cognizant COTP or his or her designated representatives may be contacted by the following means:

(i) Channel 13 or 16, VHF–FM.

(ii) By telephone: Southeast Alaska (907) 957–0150; Prince William Sound (907) 835–7205; and Western Alaska (907) 271–6700.

(3) The District Command Center's 24-hour non-emergency telephone number is (907) 463–2001.

(e) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a HCP vessel, any Federal Law Enforcement Officer or State Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the District Commander, cognizant COTP, or on-scene official patrol may be assisted by other Federal, State or local agencies in enforcing this section.

(f) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: February 7, 2005.

James C. Olson,

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

[FR Doc. 05–4598 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–010]

RIN 1625–AA00 and 1625–AA87

Safety and Security Zones; Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove three established safety/security zone regulations for Chesapeake Bay, Maryland, Captain of the Port Hampton Roads and Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries. The Commander of the Fifth Coast Guard District recently issued a District-wide security zone regulation for escorted vessels that will make these three previously established safety/security zone regulations unnecessary. This proposed rule would eliminate any duplication between the three established safety/security zone regulations and the recently established District-wide security zone regulation for escorted vessels.

DATES: Comments and related material must reach the Coast Guard on or before April 8, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–010 and are available for inspection or copying at the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia, 23704 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant E.J. Terminella, Fifth Coast Guard District, at (757) 398–7783.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–05–010],

indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate making the final rule effective less than 30 days after publication. This would be done pursuant to 5 U.S.C. 553 (d) which provides exceptions to the requirement not to make a rule effective less than 30 days after publication, including for rules, like this proposed one, that relieve restrictions.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia 23704 explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In 2003 and 2004, the Coast Guard promulgated three safety/security zones regulations found at 33 CFR 165.500, 33 CFR 165.503 and 33 CFR 165.511. The first rule is entitled ''Safety/Security Zones; Chesapeake Bay, Maryland'', was published in the **Federal Register** (68 FR 43311) on July 22, 2003, and is also found at 33 CFR 165.500. That final rule established moving safety and security zones 500 yards around all cruise ships and vessels transporting CDC, LNG or LPG while transiting or moored in the COTP Baltimore zone.

The second rule entitled ''Security Zone; Captain of the Port Hampton Roads,'' was published in the **Federal Register** (69 FR 40769) on July 7, 2004, and is also found at 33 CFR 165.503. That final rule established moving safety and security zones 500 yards around all passenger vessels or vessels carrying a CDC within the Captain of the Port Hampton Roads zone. Section 165.503 requires vessels to travel at the minimum speed necessary to navigate safely within the outer 400 yards of the zone, and not to enter the inner 100 yards of the zone without permission of the COTP.

The third rule entitled ''Security Zone; Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries'' was published in the **Federal Register** (69 FR 56697) on September 22, 2004, and is also found at 33 CFR 165.511. That final rule established moving safety and security zones in a 500-yard radius around escorted passenger vessels in the Captain of the Port, Philadelphia zone as defined in 33 CFR 3.25–05. Section 165.511 requires vessels to travel at the minimum speed necessary to navigate safely within the outer 400 yards of the zone, and not to enter the inner 100 yards of the zone without permission of the COTP.

On February 28, 2005, the Commander, Fifth Coast Guard District signed a final rule—which appears elsewhere in today's **Federal Register**, docket number CGD05–05–171—establishing moving security zones around all escorted vessels which is found at docket CGD05–05–171. This final rule will become effective April 13, 2005. That final rule applies to all escorted vessels transiting or moored in the waters of the Fifth Coast Guard District. That rule places a 500-yard security zone around all vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a local law enforcement agency during their transit through the Fifth Coast Guard District. Only vessels traveling at the minimum safe speed may transit in the 500-yard zone and no persons or vessels are allowed within 100 yards of any escorted vessel, without the permission of the District Commander, Captain of the Port or their designated representatives, while the vessel is within the Fifth Coast Guard District.

Once that final rule signed by the Commander, Fifth Coast Guard District, becomes effective on April 13, 2005, the safety/security zones for Chesapeake Bay, Maryland, Captain of the Port Hampton Roads and Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries will no longer be necessary. That final rule to be codified at 33 CFR 165.518 accomplishes the same security as the three zones this rule proposes to remove (33 CFR 165.500, 33 CFR 165.503 and 33 CFR 165.511) and maintains consistency throughout the Fifth Coast Guard District.

Discussion of Proposed Rule

This proposed rule would amend 33 CFR part 165 by removing the security zones regulations currently found at 33 CFR 165.500, 33 CFR 165.503 and 33 CFR 165.511. The removal of these three regulations, combined with the final rule ''Security Zone; Fifth Coast Guard District'' published elsewhere in today's **Federal Register**, will provide consistent enforcement of moving security zones around all escorted vessels during their entire transit through the Fifth Coast Guard District. This will prevent confusion for mariners and vessels transiting across the various Captain of the Port zones located in the Fifth Coast Guard District.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary as this proposed rule removes a portion of a regulation that is no longer necessary.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Jay Michalczak, Waterway Management Section, Marine Safety Office Corpus Christi, at (361) 888–3162, Ext 313. The Coast Guard will not retaliate against small entities that question or complain about this

rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.500 [Removed]

2. Remove § 165.500.

§ 165.503 [Removed]

3. Remove § 165.503.

165.511 [Removed]

4. Remove § 165.511.

Dated: February 28, 2005.

Sally Brice-O'Hara,

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

[FR Doc. 05–4602 Filed 3–8–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050228048–5048–01; I.D. 021705A]

RIN 0648–AS19

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Rebuilding Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues proposed regulations to implement Amendment 23 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 23)

prepared by the Gulf of Mexico Fishery Management Council (Council). These proposed regulations would increase the minimum size limit for vermilion snapper to 11 inches (27.9 cm), total length (TL), for the recreational and commercial sectors; establish a 10–fish recreational bag limit for vermilion snapper within the existing 20–fish aggregate reef fish bag limit; and close the commercial vermilion snapper fishery from April 22 through May 31 each year. In addition, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Amendment 23 would establish a stock rebuilding plan, biological reference points, and stock status determination criteria for vermilion snapper in the Gulf of Mexico. The intended effect of these proposed regulations is to end overfishing and rebuild the vermilion snapper resource.

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on April 25, 2005.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

• E-mail: *0648–AS19.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AS19.

• Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Peter Hood, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

• Fax: 727–570–5583 (through March 18, 2005), 727–824–5308 (on and after March 22, 2005); Attention: Peter Hood.

Copies of Amendment 23, which includes a Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analyses (IRFAs), and a Final Supplemental Environmental Impact Statement (FSEIS), may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; e-mail: *gulfcouncil@gulfcouncil.org*. Copies of Amendment 23 can also be downloaded from the Council's website at *www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–570–5305; fax: 727–570–5583 (through March 18, 2005), 727–824–5308 (on and after March 22, 2005); e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

In October 2003, NMFS declared the Gulf of Mexico stock of vermilion snapper to be overfished and undergoing overfishing. This determination was based, in part, on the results of a 2001 NMFS vermilion snapper stock assessment and review by the Council's Reef Fish Stock Assessment Panel that found the stock to be undergoing overfishing. Subsequently, NMFS reexamined the assessment, as well as more recent data that ultimately supported the findings of the assessment, and declared the Gulf of Mexico vermilion snapper stock overfished. Therefore, measures to end overfishing and a rebuilding plan to restore the stock to the stock biomass needed to allow harvest at maximum sustainable yield (B_{MSY}) in 10 years or less are still necessary.

Amendment 23 and this proposed rule contain measures for vermilion snapper that are designed to end overfishing and initiate implementation of the rebuilding plan in a manner that allocates the necessary restrictions fairly and equitably between the recreational and commercial sectors of the fishery, as required by the Magnuson-Stevens Act.

Stock Rebuilding Plan

Amendment 23 would establish a 10 year vermilion snapper rebuilding plan, structured in one 4-year interval followed by two 3 year intervals, that would end overfishing and rebuild the stock to B_{MSY}. In Amendment 23, the rebuilding plan begins in 2004 and continues through 2013. However, due to the time required to complete supporting documentation, implementation of this amendment will not occur until 2005. Therefore, the rebuilding plan has been moved forward one year and will begin in 2005. Measures to implement the plan are designed to allocate the required reductions equitably between the commercial and recreational sectors. The intervals are intended to provide short-term stability for the management and operation of the fishery, correlate more closely with the timing of future stock assessments, and provide a more reasonable time period for assessing the impacts of prior management actions. The appropriate parameters for each time interval, consistent with the overall objectives of the rebuilding plan, would be determined based upon the most recent stock assessment.

Initial (2005–2008) Implementation of the Rebuilding Plan

Based on the results of the 2001 vermilion snapper stock assessment and updated indices of abundance, the allowable harvest for the first 4-year interval starting in 2005 is 1.475 million lb (0.664 million kg). This equates to a 25.5–percent reduction in harvest based on the 2003 predicted landings. The following measures in this proposed rule are designed to achieve that reduction fairly and equitably within both the commercial and recreational sectors.

Measures Applicable to the Recreational Vermilion Snapper Fishery

This proposed rule would establish a minimum size limit for recreationally caught vermilion snapper of 11 inches (27.9 cm) total length (TL) and a bag limit of 10 fish within the 20 reef fish aggregate bag limit. The increase in the size limit, from 10 inches (25.4 cm) TL to 11 inches (27.9 cm) TL, and the further restriction of the bag limit would achieve approximately a 21.5–percent reduction relative to the estimated 2003 recreational harvest. Size limits are an effective method to protect fish until they become mature and have had a chance to spawn. Ninety percent of female vermilion snapper are mature by 8 inches (20.3 cm) TL, so the 11–inch (27.9–cm) minimum size limit would ensure that even the fastest growing fish would be able to spawn before entering the fishery. Reducing the bag limit would reduce fishing mortality on legal-sized fish.

The reduction in harvest achieved by these measures is slightly less than the target 25.5 percent specified by the rebuilding plan. Vermilion snapper harvest has increased dramatically from the late 1980s and early 1990s principally as a result of increases in commercial harvest. This increase is believed to have been the primary cause of the overfishing and overfished conditions that must now be addressed by this amendment. Therefore, the Council believed that less of the socioeconomic cost of rebuilding the fishery needed to be placed on the recreational sector.

Measures Applicable to the Commercial Vermilion Snapper Fishery

For the commercial fishery, this proposed rule would establish a vermilion snapper minimum size limit of 11 inches (27.9 cm) TL and a closed season from April 22 through May 31

each year. This would achieve a 26.3–percent harvest reduction from the estimated 2003 commercial landings. Increasing the minimum size limit from 10 inches (25.4 cm) to 11 inches (27.9 cm) TL would ensure that even the fastest growing fish would be able to spawn before entering the fishery, but will initially increase the number of discards early in the rebuilding plan until the population rebuilds. The season closure may increase discards during the time period that the red snapper fishery is open, May 1 through May 10. However, the closed season will provide some protection for spawning vermilion snapper because the closure is at the beginning of the spawning season. The combination size limit increase and season closure is expected to produce a small initial net economic loss during the first 5 years of the rebuilding plan, but economic gains should be realized during the second half of the 10-year rebuilding period.

The reduction in harvest achieved by these measures is slightly more than the target 25.5 percent needed by the rebuilding plan. As mentioned above, increasing harvests by the commercial sector are believed to have contributed the most to the overfishing and overfished conditions that must now be addressed by this amendment. Therefore, the Council believed that more of the socioeconomic cost of rebuilding the fishery needed to be placed on the commercial sector. Because the commercial sector lands the majority of vermilion snapper (79 percent of the harvest between 1996 and 2002), the harvest reduction of 26.3 percent obtained by these measures was deemed appropriate.

Biological Reference Points and Stock Status Determination Criteria

Consistent with the requirements of the Magnuson-Stevens Act, Amendment 23 would also establish the following biological reference points and stock status determination criteria for Gulf of Mexico vermilion snapper: maximum sustainable yield (MSY); optimum yield (OY); maximum fishing mortality threshold (MFMT) (the fishing mortality rate which, if exceeded, constitutes overfishing); and minimum stock size threshold (MSST) (the stock size below which the stock would be considered overfished).

MSY = The yield associated with the rate of instantaneous fishing mortality that can produce maximum sustainable yield (F_{MSY}) when the stock is at equilibrium. MSY is estimated to be 3.37 million lb (range 3.18 to 4.03 million lb) (1.52 million kg; range 1.43 to 1.81 million kg).

OY = The yield corresponding to a fishing mortality rate (F_{OY}) defined as $0.75*F_{MSY}$ when the stock is at equilibrium. During the rebuilding period (2005–2014), OY is defined as the allowable harvest for each year based on the rebuilding strategy.

MFMT = F_{MSY} (currently estimated at 0.32), or the fishing mortality consistent with recovery to MSY in no more than 10 years.

MSST = $(1–M)*B_{MSY}$ (or B_{MSY} proxy). M is the natural mortality rate for vermilion snapper and is currently estimated to be 0.25. Because the most recent stock assessment estimates B_{MSY} as 10.6 million lb (4.8 million kg), MSST would equal 7.95 million lb (3.58 million kg).

Classification

At this time, NMFS has not determined that Amendment 23, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on Amendment 23 and the comment period on this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a final supplemental environmental impact statement (FSEIS) for Amendment 23; a notice of availability was published on February 24, 2005 (70 FR 9028). The FSEIS concluded that the establishment of biological reference points and status determination criteria would have no direct positive or negative significant impacts on vermilion snapper, other species, or participants in the vermilion snapper fishery because they simply provide fishery managers with reference point to consider in developing fishery management measures and assessing fishery performance. The rebuilding plan would increase the vermilion snapper stock size and ensure the stock's ability to sustain itself over the long term. This would provide significant positive effects to the biological and ecological environment. While the rebuilding plan and associated harvest reduction create short-term economic losses in both the recreational and commercial fisheries, they are expected to create positive long-term economic benefits when compared to status quo.

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule will set specific sustainable fishing parameters for vermilion snapper and establish a rebuilding plan for the overfished vermilion snapper stock.

The objectives of the proposed rule are to bring management of the vermilion snapper fishery into compliance with requirements of the Magnuson-Stevens Act by addressing the overfished and overfishing conditions of the vermilion snapper stock and establishing a rebuilding plan for the overfished vermilion snapper stock.

The proposed rule would impact both the commercial and recreational participants in the Gulf reef fish fishery. At present, both the commercial and for-hire reef fish permits are under a moratorium, and no new permits will be issued during the moratorium. Reef fish dealers in the Gulf are required to obtain permits to handle reef fish caught in the Gulf. There are 1,158 active commercial reef fish permits (as of October 2003). Of these commercial permitees, 441 vessels reported in their logbook submissions to have landed vermilion snapper, with most using vertical line gear. There are 1,552 for-hire vessels with active permits (as of October 2003). Also, there are 431 dealers that purchase reef fish from various vessels in the Gulf. The proposed rule is expected to affect these commercial vessels, for-hire vessels, and fish dealers.

According to a survey of commercial fishing vessels in the Gulf, average gross receipts ranged from $24,095 for low-volume vertical line vessels to $116,989 for high-volume longline vessels. The average reef fish vessel generated annual gross revenues of $65,200, of which $7,400 was from sales of vermilion snapper. Also, according to a survey of reef fish processors in the Southeast, employment by reef fish processors totaled 700 individuals, both part and full time. Given this number and the likelihood that fish dealers are generally of smaller size than processors, employment by any of the affected dealers is very likely to be less than 500 individuals. Furthermore, according to two surveys of for-hire vessels in the Gulf, average gross receipts for charterboats range from $58,000 in the eastern Gulf to $81,000 in the western Gulf, or an overall average of $64,000.

Gross receipts for headboats range from $281,000 in the eastern Gulf to $550,000 in the western Gulf, or an overall average of $400,000. A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of $3.5 million in the case of commercial harvesting entities or $6.0 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given these data on earnings and employment, the business entities affected by the proposed rule are determined to be small business entities.

Measures for specifying sustainable fishing parameters have no economic impacts on small entities. These specifications simply establish the boundaries for management measures that may need to be implemented. Effects could be quantified and addressed when such management measures are promulgated

There are five rebuilding alternatives under consideration. Alternative 1 is the no action alternative and is not considered a viable alternative because, pursuant to the Magnuson-Stevens Act, a rebuilding plan must be instituted for the overfished vermilion snapper stock. Alternative 2 is a 10-year rebuilding plan using a constant harvest strategy. Alternative 3, the Council's preferred alternative, is a 10-year rebuilding plan using a stepped strategy. Alternative 4 is a 10-year rebuilding plan using a constant fishing mortality strategy. Alternative 5 is a 7-year rebuilding plan using a stepped strategy. As all alternatives require harvest reductions, at least in the initial years of the rebuilding, all would result in negative short-term impacts, but, as the stock rebuilds, more positive benefits would be realized. Over the short-run, Alternative 2 results in the least negative impacts, followed by Preferred Alternative 3. Over time, however, Alternative 2 would provide the lowest overall economic impact on small entities. Alternatives 4 and 5 would provide higher positive economic impacts than Preferred Alternative 3 over a period of 10 years, but, in the early years of the rebuilding, these two alternatives would bring about more negative effects on small entities. Over the entire period considered, the various rebuilding alternatives may be ranked in descending order in terms of net economic impacts as follows: Alternative 5, Alternative 4, Alternative 3, Alternative 2, and Alternative 1.

Measures to reduce harvest of the recreational and commercial sectors have direct and immediate impacts of the operations of small entities. There are six recreational management measure alternatives under consideration. Alternative 1 is the no action alternative, which does not effect any harvest reduction. Alternative 2 provides for a daily bag limit of 2 fish per person within the existing 20–reef fish aggregate bag limit. Alternative 3 imposes a minimum size limit of 11 inches (28 cm) total length (TL) with either a 10–fish (Preferred Alternative 3A) or 7–fish (Alternative 3B) daily bag limit per person within the existing 20–reef fish aggregate bag limit. Alternative 4 considers the implicit recreational allocation of total allowable catch as a quota, and would subject the recreational fishery to possible quota closures. Alternative 5 requires vermilion snapper seasonal closure from May 1 to June 21 annually. Alternative 4 provides the most net revenues to for-hire vessels in both the short term and the long term. A good deal of this effect, however, is due to the higher allocation given to the recreational sector. All other alternatives, including Preferred Alternative 3A, would generate short-term reductions but long-term increases in vessel net revenues. Preferred Alternative 3A results in the highest negative impacts in the short term and the lowest positive impacts in the long term. Preferred Alternative 3A would reduce for-hire vessel profits by $2.29 million ($1,476 per vessel) in the first 5 years of the rebuilding but would increase profits by $5.05 million ($3,254 per vessel) in the subsequent rebuilding period, resulting in an overall increase in profits by $2.76 million ($1,778 per vessel) for the entire 10-year rebuilding period.

There are eight commercial management alternatives under consideration. Alternative 1 is the no action alternative. Alternative 2 provides for a trip limit option of 1,625 lb (737 kg) of vermilion snapper. Alternative 3 imposes a minimum size limit of 12 inches (30.5 cm) TL. Alternative 4A imposes an 11–inch (28–cm) TL minimum size limit together with a trip limit of 2,300 lb (1,043 kg) of vermilion snapper. Alternative 4B imposes an 11–inch (28–cm) TL minimum size limit together with a trip limit of 2,250 lb (1,021 kg) of vermilion snapper. Alternative 5 imposes a quota equivalent to a 67–percent allocation of total allowable catch, thereby potentially subjecting the commercial fishery to quota closures. Alternative 6 provides for a vermilion snapper seasonal closure of August 1 through September 30 and December 1 through 31 annually. Preferred Alternative 7 imposes an 11–inch (28–cm) TL size limit and a 40-day closed season from April 22 through May 31. All alternatives would result in negative effects in the short term. Over the 10-year period, the seasonal closure (Alternative 6), the quota (Alternative 5), and the 11–inch TL minimum size along with the 40-day closure (Preferred Alternative 7) would result in the largest increase in net revenues. Size limit alternatives would result in the least increase in net revenues. In fact, the 12–inch (30.5–cm) TL minimum size limit would reduce net revenues over a 10-year period. Preferred Alternative 7 would reduce commercial vessel profits by $1.37 million ($3,107 per vessel) in the first 5 years of the rebuilding but would increase profits by $2.85 million ($6,463 per vessel) in the subsequent period, resulting in an overall increase in profits by $1.47 million ($3,333 per vessel) for the entire 10-year rebuilding period.

Copies of the IRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 4, 2005.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (n) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(n) *Seasonal closure of the commercial fishery for vermilion snapper.* The commercial fishery for vermilion snapper in or from the Gulf EEZ is closed from April 22 through May 31, each year. During the closure, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may fish for or possess vermilion snapper in the Gulf, regardless of where harvested. However, a person aboard a vessel for

which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain vermilion snapper under the bag and possession limits specified in § 622.39(b)(1)(v) and (b)(2), respectively, provided the vessel is operating as a charter vessel or headboat. During the closure, the sale or purchase of vermilion snapper is prohibited as specified in § 622.45(c)(5).

* * * * *

3. In § 622.37, paragraph (d)(1)(ii) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(ii) Vermilion snapper--11 inches (27.9 cm), TL.

* * * * *

4. In § 622.39, paragraph (b)(1)(v) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch--20, but not to exceed 10 vermilion snapper.

* * * * *

5. In § 622.45, paragraph (c)(5) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(c) * * *

(5) From April 22 through May 31, each year, no person may sell or purchase vermilion snapper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish. This prohibition on sale/purchase does not apply to vermilion snapper that were harvested, landed ashore, and sold prior to April 22 and were held in cold storage by a dealer or processor.

* * * * *

[FR Doc. 05–4608 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 45
Wednesday, March 9, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Food Coupon Deposit Document.

OMB Control Number: 0584–0314.

Summary of Collection: Section 10 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) requires the U.S. Department of Agriculture to issue regulations that provide for the redemption, through financial institutions, of food coupons accepted by retail food stores from program participants. Form FNS–521—Food Coupon Deposit Document (FCDD), is currently used in the Food Stamp Program by banks and financial institutions to redeem food stamp benefits from authorized retailers and to monitor the authorization of firms for compliance and continued eligibility in the Food Stamp Program.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to track deposits of food coupons. All financial institutions use the FCDD when they deposit food coupons at Federal Reserve Banks (FRBs). The information to be collected is the name, address, and unique check routing code of each financial institution that deposits food coupons on the face of every FCDD. Without the FCDD, no vehicle would exist for financial institutions, the FRB's and the FNS to track deposits of food coupons.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10,000.

Frequency of Responses: Reporting on occasion.

Total Burden Hours: 176.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4538 Filed 3–8–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: 7 CFR Part 319—Importation of Fruits and Vegetables.

OMB Control Number: 0579–0136.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States. The Plant Protect Quarantine Act and the Federal Pest Act authorizes the Department and the Animal and Plant Health Inspection Service (APHIS) to carry out this mission. Implementing the laws is necessary to prevent injurious insect pest and plant diseases from entering the United States, a situation that could produce serious consequences for U.S.

agriculture. Providing for the safe importation of these fruits and vegetables will necessitate the use of several information collection activities and forms, including an application for permit, phytosanitary certificate, certain marking requirements, trapping and survey procedures.

Need and Use of the Information: APHIS will collect information from permit applications to determine if the fruits meet the requirements for importation and also enables APHIS to evaluate potential risks associated with the proposed movement of these fruits and vegetables into the United States. The information is used to determine whether a permit can be issued, and also to develop risk-mitigating conditions for the movement.

Description of Respondents: Business or other for profit; individuals or households; not-for-profit institutions; farms; State, local or tribal government.

Number of Respondents: 822.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,343.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4539 Filed 3–8–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Inventory and Analysis Data Management

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency interim directive.

SUMMARY: The Forest Service is re-issuing an interim directive (ID) to Forest Service Handbook (FSH) 4809.11, chapter 10, to guide Forest Inventory and Analysis employees in managing information in the Forest Inventory and Analysis Database (FIADB) in a manner consistent with the data privacy provisions of Section 1770 of the Food Security Act of 1985 (7 U.S.C. 2276). The FIADB contains detailed plot and tree level data with approximate plot coordinates that allow flexible spatial data analysis. The direction adopted in the ID allows for increased location accuracy of the data from within 1.0 mile to 0.5 for each Forest Inventory plot, while requiring data masking procedures to ensure data privacy as required by Section 1770 of the Food Security Act. This interim directive is issued as ID 4809.11–2005–1 to FSH 4809.11, chapter 10.

DATES: This interim directive is effective March 9, 2005.

ADDRESSES: This interim directive (ID 4809.11–2005–1) is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Additional information regarding data access guidelines may be directed to Richard Guldin, Science Policy, Planning, Information, and Inventory Staff—Forest Service, Mail Stop 1119, Washington, DC 20090–6090; by electronic mail to *SPPII@fs.fed.us;* or by fax to (703) 605–5131. Documents are also available for inspection in the office of Science Policy, Planning, Inventory and Information Staff at 1601 North Kent Street, Arlington, VA, Suite 4110, between regular business hours of 8:30 a.m. and 4:30 p.m. Monday through Friday. To facilitate entrance into the building, visitors are encouraged to call ahead (703–605–4177).

FOR FURTHER INFORMATION CONTACT: W. Brad Smith, Science Policy, Planning, Information and Inventory Staff by phone at (703) 605–4177 or by email to *bsmith12@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Through its research organization, the Forest Service conducts continuous State-wide inventories of the Nation's forest resources to ascertain trends in the extent, condition, ownership, quantity, and quality of the forest resources as required by the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1600, 1641–1648). This information is collected in the Forest Inventory and Analysis Database. Forest statistics and subsequent analyses are released as State, Regional, and National reports and are based on data collected at sample locations on all land ownerships across the United States. Access to Forest Inventory and Analysis (FIA) data is generally available to the public through direct electronic links within 6 months for standard plots and within 12 months for forest health plots after completion of the annual field data collection season for each State.

The direction adopted in the interim directive (ID) provides for increased accuracy of publicly available plot locations from plus or minus 1 mile, to plus or minus one-half mile. Due to the increased spatial precision of data locations, additional masking measures are now necessary to ensure data privacy required by the Food Security Act. In addition, the ID provides further guidance concerning agency objectives and policy for the FIA program; direction for the use of authorized agents; and procedures to follow when releasing FIA data and information.

This ID issues without change direction previously contained in ID–4809.11–2003–1 with a notice of issuance published in the **Federal Register** on September 5, 2003 (68 FR 52739).

Dated: March 2, 2005.

Dale N. Bosworth,

Chief.

[FR Doc. 05–4533 Filed 3–8–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Special Board of Directors Meeting; Sunshine Act

TIME AND DATE: 9 a.m., Friday, March 11, 2005.

PLACE: Conference Room 107-A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Resolution for calling a special meeting of the board.
3. Discussion regarding the impact of the President's FY 2006 Budget proposal on the Rural Telephone Bank.
4. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Jonathan Claffey, Acting Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: March 4, 2005.

Thomas C. Dorr,

Chairperson, Rural Telephone Bank.

[FR Doc. 05–4642 Filed 3–8–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: American Community Survey.

Form Number(s): ACS–1(2005); ACS–1(2005)SP; ACS–1(2005)PR(SP); ACS–1(2005)PR; ACS–290; ACS–1(GQ); ACS–4(GQ).

Agency Approval Number: 0607–0810.

Type of Request: Revision of a currently approved collection.

Burden: 1,917,410 hours.

Number of Respondents: 3,122,900.

Avg Hours Per Response: Households: initial survey—38 minutes; reinterview—10 minutes. GQ Contacts: initial contact—25 minutes; reinterview—10 minutes. GQ persons: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to continue conducting the American Community Survey. The Census Bureau has developed a methodology to collect and update every year demographic, social, economic, and housing data that are essentially the same as the ''long-form'' data that the Census Bureau traditionally has collected once a decade as part of the decennial census. The American Community Survey is the information collection tool enabling this continuous measurement methodology. Federal and State government agencies use such data to evaluate and manage Federal programs and to distribute funding for various programs which include food stamps, transportation dollars, and housing grants. State, county, and community governments, nonprofit organizations, businesses, and the general public use information like housing quality, income distribution, journey-to-work patterns, immigration data, and regional age distributions for decision making and program evaluation.

In January 2005, the Census Bureau began full implementation of the American Community Survey. The American Community Survey will have an annual sample of nearly 3 million households. In addition, we will select approximately 3,000 residential addresses per month in Puerto Rico and refer to the survey as the Puerto Rico Community Survey.

Using the Master Address File (MAF) from the decennial census that is updated each year, we will mail survey forms each month to a new group of potential households, use reverse look-up directories to obtain telephone numbers of households which have not responded, and attempt to conduct interviews over the telephone. Upon completion of the telephone follow-up, we will select a subsample of the remaining households which have not responded, typically at a rate of one in three, to designate a household for a personal interview. Collecting these data from a new sample of households every month will not only provide more timely data but will lessen respondent burden in the decennial census.

We will continue to use the trimodal data collection operation already in place. We will attempt to collect data by mailing the ACS–1(2005) to the sample households. Households requiring a survey form in Spanish can request form ACS–1(2005)(SP). For Puerto Rico households, we will mail the ACS–1(2005)PR(SP). An English form ACS–1(2005)PR can also be requested. We will use computer-assisted telephone interviewing (CATI) to conduct telephone interviews for all households that do not respond by mail and for which we are able to obtain telephone numbers. We will use computer-assisted personal interviewing (CAPI) to conduct personal interviews for a sample of addresses for which we do not have a mail or CATI interview.

In addition to selecting a sample of residential addresses, we will select a sample of group quarters (GQs). Starting in January 2006, field representatives (FRs) will use the ACS–290(PT) to select a sample of people to interview within the GQs.

We will also conduct a reinterview operation to monitor the performance of FRs. Only households that provide an interview via CAPI are eligible for reinterview. A reinterview operation will also be undertaken for the Group Quarters contacts.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal government.

Frequency: The American Community Survey is conducted in a new sample of households every month.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141, 193, and 221.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: March 4, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–4574 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Pollution Abatement Costs & Expenditures Survey.

Form Number(s): MA–200S, MA–200P, MA–200.

Agency Approval Number: 0607–0176.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 120,000 hours.

Number of Respondents: 62,000.

Avg Hours Per Response: Screener—15 minutes; Pilot & Survey—5 hours.

Needs and Uses: The Pollution Abatement Costs and Expenditures (PACE) survey was conducted annually from 1973 through 1994, with the exception of 1987, and again in 1999. The PACE survey provided measures of the cost to private industry for the Nation's commitment to protecting the environment. Private industry is spending significant amounts of money to meet increasing Federal, state, and local regulations for controlling pollution. Efforts to abate pollution or decrease expenses of pollution abatement have led to technology innovation and improved efficiency for some companies. This survey was a source of data for monitoring the impact of environmental programs on the U.S. economy and responsiveness to these programs. The absence of the data over the past 5 years has highlighted the need for measures of private industry spending on pollution abatement activities. During this time, there has been no suitable substitute for measuring and monitoring these environmental changes. In particular, the Environmental Protection Agency (EPA) has had insufficient information to monitor the impact of environmental programs. These data will enable EPA to better satisfy legislative and executive requirements to track costs.

With support from the EPA, the Census Bureau plans to reinstate this

survey for 2005. As a precursor to the 2005 PACE survey, the Census Bureau also plans to conduct a screener and pilot survey.

The screener is designed to identify establishments with PACE activities and target these establishments for the pilot and 2005 PACE survey. The screener will ask respondents if they have operating costs or capital expenditures related to the treatment or prevention of air, water or solid waste pollutants. And if so, how much (within ranges). These questions will be check boxes only. The screener will include approximately 40,000 establishments.

The purpose of the pilot is to test the proposed 2005 PACE questionnaire with potential respondents who have expenses related to treatment or prevention of pollutants. Respondents will be asked to complete the form and answer some qualitative questions on the content and clarity of instructions. The pilot results will be used to modify and finalize the proposed 2005 PACE questionnaire and sample design. The pilot and the survey will collect information similar to that previously collected on the MA–200: pollution abatement capital expenditures and operating costs, each by media (air, water, solid waste, and multi-media). It will also collect information on depreciation and cost offsets. For the pilot, we will also collect employment and shipments. The final survey will only collect these data from non-ASM establishments. The pilot will include approximately 2,000 establishments. No estimates will be produced from the pilot. The survey will include approximately 20,000 establishments.

The survey results will be published in the Current Industrial Reports Series. Primary users of the pollution abatement data are Federal, state, and local government agencies, business firms, trade associations, academic researchers, environmental groups, and private research and consulting organizations.

The PACE survey results will be used by EPA to satisfy Executive Order 12866 which specifically charges EPA to assess the costs and benefits of all proposed major rules and alternative approaches. EPA also uses the PACE data in various reports including: Cost of a Clean Environment; Section 812 Clean Air Retrospective Cost Analysis; Annual OMB Reports to Congress on Costs and Benefits of Federal Regulation (Thompson Report); and Social Cost Appendix of EPA's Strategic Plan.

Capital expenditures for pollution abatement is an important component of total capital expenditures when analyzing investment and productivity at the Bureau of Labor Statistics and the Bureau of Economic Analysis.

State and local governments, trade associations, the academic community, and private businesses use the data to evaluate regional pollution abatement spending, local legislation, and performance of specific industries.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 131, 182, 193, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: March 4, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–4575 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 6 of the 2004 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 9, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on assets and liabilities, as well as expenses related to work, health care, and child support. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 Panel is currently scheduled for 4 years and will include 12 waves of interviewing, which began in February 2004. Approximately 62,000 households were selected for the 2004 Panel, of which, 46,500 are expected to be interviewed. We estimate that each household will contain 2.1 people 15 years of age or older, yielding 97,650 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing

will occur in the 2004 SIPP Panel during FY 2006. The total annual burden for 2004 Panel SIPP interviews will be 146,475 hours in FY 2006.

The topical modules for the 2004 Panel Wave 6 collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children).
- Work Related Expenses and Child Support Paid.
- Assets, Liabilities, and Eligibility.

Wave 6 interviews will be conducted from October 2005 through January 2006.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews will require an additional 1,553 burden hours in FY 2006.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 Panel, respondents are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0905.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 97,650 people per wave.

Estimated Time Per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 148,028.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: March 4, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–4577 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2006 American Community Survey Content Test

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed an/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before May 9, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Wendy D. Hicks, U.S. Census Bureau, Room 2027, SFC 2, Washington, DC 20233, (301) 763–2431 (or via the Internet at *wendy.davis.hicks@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade data collection approach of a decennial census is no longer acceptable for the mandated or required data traditionally collected on the census long-form. To meet the needs and expectations of the country, the Census Bureau developed the American Community Survey (ACS). This survey collects long-form data every month and provides tabulations of these data on a yearly basis. In the past, the long-form data were collected only at the time of each decennial census. The ACS allows the Census Bureau to remove the long form from the 2010 Census, thus reducing operational risks, improving accuracy, and providing more relevant data.

Full implementation of the ACS in 2005 includes an annual sample of approximately three million residential addresses in the 50 states and District of Columbia and another 36,000 residential addresses in Puerto Rico each year. While this large sample of addresses permits production of single year estimates for areas with a population of 65,000 or more, estimates at lower levels of geography require aggregates of three and five years worth of data. The year 2008 is the first year for significant changes to the ACS content since the 2001. From 2008 through 2012, it is important that the content of the ACS questions remain consistent for the three- and five-year aggregated data estimates that the ACS data will produce. 2008 will mark the beginning of a period during which both three- and five-year aggregated data estimates will be based on new or revised ACS content, and will also include data collection in the year that coincides with the next decennial census (2010). Given the significance of the year 2008, the ACS has committed to a research program during 2006 that will result in final content determination in time for the 2008 ACS. This research is the 2006 ACS Content Test.

The 2006 ACS Content Test includes four stages: (1) Identification of content eligible for testing, (2) content determination, (3) content test implementation, and (4) recommendations for final content in 2008. The first stage involves the joint efforts of multiple Federal agencies that either sponsor or use data from the ACS, as well as subject matter experts from within the Census Bureau. Together, they have demonstrated problems with

existing questions or content on the ACS, such as out-of-date response categories, or more consequential problems such as questions resulting in estimates that seem systematically lower or higher than expected, based on comparisons to other sources. Additionally, recent or anticipated legislative action may result in identification of new content, not currently included on the ACS, for testing. In this phase, 11 of 25 existing housing questions, 15 of 43 existing socio-economic questions, and three new socio-economic questions were identified for inclusion in the second stage of the content test.

The second stage of the content test, content determination, includes cognitive laboratory pretesting, expert reviews and other pretesting methods for the purpose of developing alternate versions of question content identified as eligible for testing. As with the previous stage, representatives from numerous federal agencies, as well as other data users, have contributed to these early pretesting efforts by providing their subject matter expertise in the development of alternatives.

Content test implementation, the third stage, will include a national sample field test with approximately 50,000 residential addresses. About half of the sample will serve as the test panel for the content, and the other half will serve as the control panel, receiving the current content of the 2005 ACS. The ACS Content Test will reflect almost all of the same data collection methodology as used with the current ACS, starting with mailing a prenotice letter and then an initial mailing package with an ACS questionnaire to residential addresses selected for participation. As with the current ACS, Census Bureau will mail a second questionnaire to the sampled address if no response is received after three weeks. Census Bureau staff will then follow-up households that do not respond by using computer-assisted telephone interviewing (CATI) and computer-assisted personal interviewing (CAPI).

Operations for the 2006 ACS Content Test and the current ACS will differ in that the content test will not provide Telephone Questionnaire Assistance (TQA), nor will it include a Telephone Edit Follow-Up (TEFU) operation for mail respondents. The TQA operation provides direct assistance to respondents while answering the mail form, potentially influencing how they interpret and respond to questions. The TEFU operation follows-up with households that return a mail form to collect more complete data. The 2006 ACS Content Test excludes these two operations so that we can analyze data that most directly reflects the household's response to the questions.

Additionally, the 2006 ACS Content Test will differ from the current ACS in that the content test will include a CATI Content Follow-up as a method to measure simple response variance and response bias. Both response variance and response bias will serve as critical indicators of the quality of the test questions relative to the current versions of the ACS questions. Both English and Spanish languages will be available in the automated instruments used for this content test.

In the fourth and final stage, final content recommendations, an analysis of the data collected, including content follow-up data, will guide the selection of the versions of the questions that yield the highest quality data. Census Bureau analysts, subject matter experts, and experts from the other participating federal agencies will work together to determine the final question content based on the results of the test. The end product will reflect final content recommendation based on input from all participants. These recommendations are expected in the early part of January 2007, so that the Census Bureau can implement all the necessary changes to the existing ACS data collection materials (*e.g.*, questionnaires, CATI/CAPI instruments, questionnaire instruction booklet, interviewer training materials, *etc.*) to reflect the final recommended questions/content in time for implementation of the 2008 ACS.

II. Method of Collection

The Census Bureau will mail prenotice letters and then paper questionnaires to households selected for the 2006 ACS Content Test. A reminder card is delivered to all sampled households that have not responded to the survey two weeks after the initial questionnaire was mailed. For households that do not return a questionnaire after three weeks, a second questionnaire is mailed to the non-responding household. After four weeks, Census Bureau staff will attempt to conduct interviews via CATI.

Census Bureau staff will conduct a CAPI for remaining non-response households after eight weeks. All responding households that include a telephone number on their returned questionnaire will be eligible for Content Follow-Up. The Content Follow-up reinterviews will start approximately two weeks after receipt of the first mail returns and continue for approximately two weeks after the closeout of CAPI operations.

III. Data

OMB Number: Not available.

Form Number(s): ACS–1(2006), ACS–1(2006)T, and a subset of questions from ACS–1(2006)T for Content Follow-up.

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: During the period of January 2–March 31, 2006, we plan to contact a maximum of 50,000 residential addresses and approximately 30,000 responding households will be contacted for Content Follow-up.

Estimated Time Per Response: 38 minutes per residential address, 30 minutes per residential address for Content Follow-up.

Estimated Total Annual Burden Hours: 46,667.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collections techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the OMB approval of this information collection; they also will become a matter of public record.

Dated: March 4, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–4578 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2005]

Foreign-Trade Zone 40—Cleveland, OH, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga

County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 2005.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; and, Board Order 1295, 68 FR 52383, 9/3/03); March 2004 (Board Order 1320, 69 FR 13283, 3/22/04 and Board Order 1322, 69 FR 17642, 4/5/04); and, September 2004 (Board Order 1351, 69 FR 56038, 9/17/04).

The general-purpose zone project currently consists of the following sites in the Cleveland area: *Site 1* consists of 1,339 acres in Cleveland, which includes the Port of Cleveland complex (Site 1A—94 acres), the Cleveland Bulk Terminal (Site 1B—45 acres), and the Tow Path Valley Business Park (Site 1C—1,200 acres); *Site 2* (175 acres)—the IX Center in Brook Park, adjacent to Cleveland Hopkins International Airport; *Site 3* consists of 2,263 acres, which includes the Cleveland Hopkins International Airport Complex (Site 3A—1,727 acres), the Snow Road Industrial Park in Brook Park (Site 3B—42 acres), and the Brook Park Road Industrial Park (Site 3C—322 acres) in Brook Park, and the Cleveland Business Park (Site 3D—172 acres) in Cleveland; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (17 acres)—within the Collinwood Industrial Park, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* consists of 193 acres in Strongsville, which includes the Strongsville Industrial Park (Site 7A—174 acres) and the Progress Drive Business Park (Site 7B—19 acres); *Site 8* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; *Site 9* (4 acres)—within the Frane Properties Industrial Park, 2399 Forman Road, Morgan Township; *Site 10* (60 acres)—within the Solon Business Park, Solon; *Site 11* (170 acres, 2 parcels)—within the 800-acre Harbour Point Business Park, Baumhart Road, at the intersections of U.S. Route 6 and Ohio Route 2, Vermilion; and, *Temporary Site* (11 acres)—3 warehouse locations: 29500 Solon Road (250,000 sq. ft.), 30400 Solon Road (110,000 sq. ft.), and 31400 Aurora Road (117,375 sq. ft.) located within the Solon Business Park in Solon (expires 4/1/05). Several applications are currently pending with the Board to expand FTZ 40: Dockets 19–04, 20–04, 25–04 and 5–05.

The applicant is now requesting authority to expand existing Site 7B at the Progress Drive Business Park to include two additional parcels (22 acres total) located at 19963 and 20137 Progress Drive in the City of Strongsville. The site is owned by Spazzeo Enterprises, LLC (10 acres), and Atlantic Tool & Die Company (12 acres). The site will be used for general warehousing and distribution activities. (A pending application to reorganize FTZ 40 (Docket 20–2004) proposes to consolidate and renumber the FTZ sites, and under this plan Site 7B would become Site 6B (including the proposed expansion area).)

No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is May 9, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 23, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: March 1, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–4618 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–2005]

Foreign-Trade Zone 147—Reading, PA Application for Expansion/Reorganization

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, requesting authority to expand FTZ 147, in the south central Pennsylvania, area, adjacent to the Harrisburg Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 2005.

FTZ 147 was approved on June 28, 1988 (Board Order 378; 53 FR 26094, 07/11/88), at sites in Berks County in southeastern Pennsylvania, adjacent to the Philadelphia U.S. Customs port of entry. The zone project currently consists of the following sites in the southeastern and south central Pennsylvania area: *Site 1* (865 acres)—Reading Municipal Airport complex, 2502 Bernville Road, Berks County; Site 2 (7 acres)—Second Street and Grand Street, Hamburg (Berks County); Site 3 (161 acres)—Excelsior Industrial Park, Maiden Creek Township (Berks County); Site 4 (1,401 acres, 7 parcels)—within the International Trade District of York: *Parcel A* (1,097 acres)—manufacturing facility at 225 North Emigsville Road, York; *Parcel B* (27 acres)—East Berlin and Zarfoss Roads, York; *Parcel C* (37 acres)—York Rail Logistics, 2790 West Market Street, York; *Parcel D* (17 acres)—500 Lincoln Street, York (12 acres) and 160 & 222 N. Hartley Street (5 acres), York; *Parcel E* (7 acres)—Industrial Plaza of York, Roosevelt Avenue and West Philadelphia Street, York; *Parcel F* (2 acres)—Central York Warehouse, 100 East Hay Street, York; *Parcel G* (214 acres)—600 and 601 Memory Lane, York; Site 5 (57 acres, 6 parcels)—within the Penn Township Industrial Park (PTIP): *Parcel A* (11 acres)—762 Wilson Avenue, York; *Parcel B* (3

acres)—adjacent to Parcel A North, York; *Parcel C* (10 acres)—14 Barnhart Drive, York; *Parcel D* (2 acres)—16 Barnhart Drive, York; *Parcel E* (23 acres)—26 Barnhart Drive (15 acres) & 29 Barnhart Drive (8 acres), Hanover; *Parcel F* (9 acres)—PTIP Lots #32, 34, 37 and 38, adjoins Parcel E, York; Site 6 (27 acres)—Hanover Terminal, Center Street at CSXT Railroad, Hanover.

The applicant is requesting authority to reorganize the general-purpose zone by formally deleting the existing Parcel F (2 acres) of Site 4 and removing 500 acres of Site 4, Parcel A. The applicant is also requesting to add a 228-acre industrial park, 260 Hidden Lane, York County, to be designated as the new Parcel F of Site 4. The applicant is further requesting to delete Parcel B of Site 5 (Lot #11, 3 acres) and to replace it with a 24-acre site, located at 401 Moulstown Road in Penn Township, York County, PA.

The applicant also is requesting authority to expand the general-purpose zone to include 9 additional industrial sites in south central Pennsylvania, adjacent to the Harrisburg Customs port of entry: Proposed Site 7 (155 acres)—Greenspring Industrial Park, 305 Green Springs Road, York County; Site 8 (152 acres)—Fairview Business Park, McCarthy Drive and Industrial Drive, York County; Site 9 (182 acres, 3 parcels)—*Parcel A* (34 acres)—900 Kriner Road, Chambersburg; *Parcel B* (121 acres)—WCN Drive and Guilford Springs Road, Guilford Township, Franklin County; *Parcel C* (30 acres)—Guilford Springs Road, Guilford Township; Site 10 (1214 acres)—Cumberland Valley Business Park (formerly known as Letterkenny Army Depot), 5121A Coffey Avenue, Franklin County; Site 11 (310 acres)—Prologis Park 81, I–81 and Walnut Bottom Road, Cumberland County; Site 12 (242 acres)—LogistiCenter, Allen Road Extension and Distribution Drive, Carlisle; Site 13 (100 acres)—Capital Business Center, Dauphin County; *Parcel A* (11 acres)—400 First Street, Middletown; *Parcel B* (33 acres)—401 First Street, Middletown; *Parcel C* (16 acres)—400 First Street Expressway, Middletown; *Parcel D* (8 acres)—500 Industrial Lane, Middletown; *Parcel E* (15 acres)—600 Hunter Lane, Middletown; *Parcel F* (17 acres)—300 Hunter Lane, Middletown; Site 14 (164 acres)—Conewago Industrial Park, 1100 Zeager Road, Elizabethtown; and, Site 15 (70 acres)—LogistiCenter, 4950 Hanoverville Road, Bethlehem. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. Submissions via U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is May 9, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 23, 2005).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and Foreign-Trade Zone Corporation of Southeastern Pennsylvania, 601 Penn Street, Suite 101, Reading, Pennsylvania 19601.

Dated: March 1, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–4617 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Initiation of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is initiating a changed circumstances administrative review of the antidumping duty order of carbon and certain alloy steel wire rod (steel wire rod) from Canada [1] in response to a request from Mittal Canada Inc. (Mittal), a Canadian exporter of steel wire rod from Canada to the United States. Mittal has requested that the Department conduct a changed circumstances review to determine that it is the successor-in-interest to Ispat Sidbec Inc. (Ispat), and as a result to find that steel wire rod manufactured and exported by Mittal should be accorded the same treatment previously accorded to Ispat in regards to the antidumping order on steel wire rod from Canada.

EFFECTIVE DATE: March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or David Neubacher, at (202) 482–1376 or (202) 482–5823, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** an antidumping duty order on steel wire rod from Canada. *See Antidumping Order.* One of the companies subject to the investigation was Ispat. On January 14, 2005, Mittal requested that the Department determine that it had become the successor-in-interest of Ispat. *See* Letter from Ispat to Assistant Secretary for Import administration, Re: Expedited Changed Circumstances Review to Determine that Mittal Canada Inc is the successor-in-interest to Ispat Sidbec Inc./Administrative Review of Antidumping Duty Order Regarding Carbon and Certain Alloy Steel Wire Rod from Canada (January 14, 2005).

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 65944 (October 29, 2002) (*Antidumping Order*).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon request from an interested party or receipt of information concerning an antidumping duty order, when either of these shows changed circumstances sufficient to warrant a review of the order. In this case, the Department finds that the information submitted by Mittal provides sufficient evidence of changed circumstances to warrant a review to determine whether Mittal is the successor-in-interest to Ispat. Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether Mittal is the successor-in-interest to Ispat for purposes of determining antidumping duty liability with respect to imports of steel wire rod from Canada produced and exported by Ispat and whether the order as applied to Ispat should apply to subject merchandise manufactured and exported by Mittal.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

With regard to Ispat, Mittal claims that the production facilities and contractual relationships with suppliers and customers remained unchanged after Mittal assumed control of the company. According to Mittal, its assets

have remained essentially the same as those of Ispat.

Mittal has requested that the Department initiate an expedited review pursuant to section 751(b) of the Act and 19 CFR 351.221(c)(3)(iii). However, because it is the Department's practice to examine changes in management and customer base as part of its analysis in such a determination, and Mittal has not addressed these factors, we are denying its request to conduct the changed circumstances review on an expedited basis.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i) (2004), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 60 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303 (2004), and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303(f) (2004). The Department will issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e) (2004), and will publish these results in the **Federal Register**.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222 of the Department's regulations.

Dated: March 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–996 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Helical Spring Lock Washers from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 9, 2005.

SUMMARY: On November 19, 2004, the Department of Commerce (the Department) published in the **Federal Register** (69 FR 67701) a notice announcing the initiation of an administrative review of the antidumping duty order on helical spring lock washers from the People's Republic of China (PRC), covering the period October 1, 2003, through September 30, 2004, and one manufacturer/exporter of the subject merchandise, Hangzhou Spring Washer Co., Ltd. (also known as Zhejiang Wanxin Group, Ltd.) (collectively, Hangzhou). We are now rescinding this review as a result of Shakeproof Assembly Components Division of Illinois Tool Works, Inc. (Shakeproof)'s withdrawal of its request for an administrative review. No other parties requested a review.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Marin Weaver at (202) 482–2336, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2004, Shakeproof, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping duty order on helical spring lock washers from the PRC. On November 19, 2004, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period October 1, 2003, through September 30, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701. On January 31, 2005, Shakeproof withdrew its request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Shakeproof was the only party to request this review and it withdrew its request within the 90–day period. Accordingly, this review is rescinded. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of these final results of review.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 2, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–995 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Melissa Blackledge, AD/CVD Operations, Office 4, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4081 or (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2004, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan, covering the period July 1, 2003, through June 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 52857. The preliminary results of review are currently due no later than April 2, 2005.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because the review involves examining complex affiliation and cost issues. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than August 1, 2005, which is the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: February 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–994 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Great Bay National Estuarine Research Reserve, New Hampshire; the American Samoa Coastal Management Program; the Rookery Bay National Estuarine Research Reserve, Florida; the Puerto Rico Coastal Management Program; and the California Coastal Commission Coastal Management Program.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a State has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Great Bay National Estuarine Research Reserve, New Hampshire, evaluation site visit will be held April 26–28, 2005. One public meeting will be held during the week. The public meeting will be on Wednesday, April 27, 2005, at 7 p.m., at the New Hampshire Fish and Game Department, Region 3 Office, 225 Main Street, Durham, New Hampshire.

The American Samoa Coastal Management Program evaluation site visit will be held June 6–10, 2005. One public meeting will be held during the week. The public meeting will be held on Monday, June 6, 2005, at 4 p.m., at the Convention Center, Utulei, American Samoa.

The Rookery Bay National Estuarine Research Reserve, Florida, evaluation site visit will be held June 20–24, 2005. One public meeting will be held during the week. The public meeting will be held on Wednesday, June 22, 2005, at 6 p.m., at the Environmental Learning Center Auditorium, Rookery Bay National Estuarine Research Reserve, 300 Tower Road, Naples, Florida.

The Puerto Rico Coastal Management Program evaluation site visit will be held June 20–24, 2005. One public meeting will be held during the week. The public meeting will be held on Wednesday, June 22, 2005, at 7 p.m. at the Puerto Rico Department of Natural and Environmental Resources, Parada 3½ Puerta de Tierra, San Juan, Puerto Rico.

The California Coastal Commission Coastal Management Program evaluation site visit will be held June 20–24, 2005. One public meeting will be held during the week. The public meeting will be held on Tuesday, June 21, 2005, at 7 p.m. at the City of Santa Cruz Police Department, Community Room, 155 Center Street, Santa Cruz, California.

Copies of States' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting held for that Program. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluations are

completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Notice is hereby given of the availability of the final evaluation findings for the Maryland, Massachusetts, New Jersey, North Carolina, Ohio, and Wisconsin Coastal Management Programs (CMPs); and the Waquoit Bay (Massachusetts) National Estuarine Research Reserve (NERR). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The States of Maryland, Massachusetts, New Jersey, North Carolina, Ohio, and Wisconsin were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. Waquoit Bay (Massachusetts) NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov*, (301) 713–3155, extension 118.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3155, extension 118.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: February 24, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–4540 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020705E]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1–year letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force to harass seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California.

DATES: March 4, 2005, through March 3, 2006

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions by harassment incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on February 06, 2004 (69 FR 5720), and remain in effect until February 06, 2009.

Issuance of this letter of authorization is based on a finding, made in the final rulemaking, that the total taking will have no more than a negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: March 4, 2005.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–4620 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The meeting will be held Thursday, March 31, 2005, from 8:30 a.m. to 5 p.m., and Friday, April 1, 2005, from 8:30 a.m. to 5 p.m.

Location: Manchester Grand Hyatt San Diego, One Market Place, San Diego, California 92101; telephone: 619–232–1234. The times and agenda topics are subject to change. Refer to the Web

site listed below for the most up-to-date meeting agenda.

FOR FURTHER INFORMATION CONTACT: Captain Roger Parsons, Designated Federal Official (DFO), Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770, Fax: 301–713–4019; e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to public participation for verbal comments and questions at the end of the day on April 1, 2005, with a 30-minute period that will be extended if needed. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 30 copies) should be submitted to the DFO by March 25, 2005. Written comments received by the HSRP DFO after March 25, 2005, will be distributed to the HSRP, but may not be reviewed prior to the meeting date. Approximately 40 seats will be available for the public, on a first-come, first-served basis.

Matters To Be Considered: Topics planned for discussion include: (1) FY 06 President's Budget (Navigation Services), (2) NOAA Mapping and Charting Outsourcing Strategies, (3) Hydrographic Survey (NOAA) and Private Sector) Cost Analysis Study Proposal, (4) Update on HSRP Congressional Fact-finding Visits, (5) U.S. Ocean Action Plan and NOAA's Hydrographic Services, (6) HSRP Workgroups—Assignments and Deliverables, (7) Endorsement of NOAA's Navigation Services Programs' Operating Principles, and (8) Public Statements.

Dated: March 3, 2005.

Captain Roger L. Parsons,

NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 05–4542 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of the Final Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of the Final Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve Operations Plan (ROP) is a requirement of Executive Order 13178, as finalized by Executive Order 13196 (hereinafter collectively referred to as Executive Order or EO). The ROP was presented to the public on two separate occasions in 2002 and 2004, and over 30,000 public comments resulted from both open public comment periods.

The most recent public comment period for the ROP opened on March 19, 2004 and ended on May 15, 2004. Approximately 29,400 public comments were received during this period, with about 27,000 arriving by e-mail and the remainder by letter and fax. In addition, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council provided both general and specific comments on the draft final ROP as did the Marine Mammal Commission, Western Pacific Regional Fisheries Management Council and a group of 13 local and national conservation organizations, claiming to represent over 3.4 million members. A similar letter was also received from a group of 10 conservation organizations (many of the same as above), collectively representing more than 2.7 million members.

FOR FURTHER INFORMATION CONTACT: 'Aulani Wilhelm, (808) 397–2660, *nwhi@noaa.gov.*

ADDRESSES: Requests for a copy of the ROP can be mailed to NWHI Coral Reef Ecosystem Reserve, 6600 Kalanianaole Highway, #300, Honolulu, Hawaii 96825; faxed to (808) 397–2662; or e-mailed to *nwhi@noaa.gov.* The ROP can also be downloaded at *http://www.hawaiireef.noaa.gov.*

SUPPLEMENTARY INFORMATION: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) was established by Executive Orders 13178 and 13196. Pursuant to the EO, NOAA prepared a draft Reserve Operations Plan that was issued for public review in February 2002 (67 FR 11998), which provided a guide for management of the Reserve during a process that will consider the marine environment of the Northwestern Hawaiian Islands for designation as a National Marine Sanctuary. Significant public comment was received on the first draft, and the NMSP considered the public comment and worked with the Reserve Advisory Council to produce a second draft Reserve Operations Plan. A second public review period was conducted from March 19 through May 15, 2004 and over 29,000 comments were received.

Comments and Responses

From all of the public comments received, a number of comments pointed out technical inaccuracies and/or suggested additional clarifying information as improvements to the ROP. Such comments were incorporated into the final document, either verbatim as suggested, or addressed by explanation. An example of a comment received and accepted which addressed a technical inaccuracy was ''The correct Latin name for killer whale is '*Orcinus*' and should replace '*Orsinus*' ''. Substantive comments to the ROP are generally described below, with NOAA's responses.

1. *Comment:* NOAA should, through the Department of Commerce, carry out formal regulations for the Executive Orders that would be enforceable within the Reserve.

Response: The NMSP will not pursue the issuance of any additional regulations for the Reserve. The NMSP's priority is to finalize the ROP and focus on the sanctuary designation process, which will include the development of regulations for the preferred alternative, rather than undertake a resource-intensive, concurrent process to issue regulations for the Reserve.

2. *Comment:* The ROP should include a penalty schedule for violation of all Reserve prohibitions.

Response: The National Marine Sanctuaries Amendments Act of 2000 does not contain a specific provision for assessing penalties. As such, the National Marine Sanctuary Program has determined that the ROP will not include a schedule of penalties for the Reserve. Remedies applicable to violations will depend on the circumstances of the particular case.

3. *Comment:* The ROP fails to provide specific plans and actions on how to recover endangered and threatened species within the Reserve.

Response: Actions needed for the recovery of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, are addressed in formal Recovery Plans. Recovery Plans for most terrestrial species are written and carried out under the authority of the U.S. Department of the Interior, Fish and Wildlife Service. Similarly, Recovery Plans for most species of marine mammals are prepared and

implemented under the authority of the U.S. Department of Commerce, National Marine Fisheries Service. In some instances where species rely on both the land and the ocean for essential life stages (such as with sea turtles and monk seals in the NWHI), the Recovery Plans are jointly written by the above-named agencies, and recovery actions are shared. Copies of Recovery Plans pertaining to threatened and endangered species within the Northwestern Hawaiian Islands may be obtained by contacting the offices of the agencies mentioned above. The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, through cooperative interagency efforts described in the ROP, will coordinate and assist both agencies in the Northwestern Hawaiian Islands.

4. *Comment:* The Reserve should implement mandatory access permits and a mandatory access notification system.

Response: The Reserve manager currently reviews requests for permits pertaining to activities proposed in the Reserve that are otherwise prohibited by the Executive Order. However, a mandatory access notification system is not mandated by the EO and thus is not a requirement for the ROP.

5. *Comment:* The ROP should constitute the ''No Action'' alternative for any sanctuary designation proposal. The Executive Summary should be expanded to note that the ROP establishes a Reserve management framework that will remain in place until modified or replaced by a management program that incorporates provisions of the Executive Orders in an approved sanctuary decision.

Response: The Sanctuary Designation Action Plan contained within the ROP describes that NOAA will prepare a draft environmental impact statement (DEIS), pursuant to the National Environmental Policy Act (NEPA), as part of the designation process. The DEIS will identify and analyze a range for alternatives, including a ''no action'' alternative. The ''no action'' alternative will describe continuing the management of the Reserve pursuant to the Executive Orders. However, it is speculative and premature, relative to the process mandated under the National Marine Sanctuaries Act and NEPA, to suggest that the ROP and provisions of the EO be approved as part of a final sanctuary decision.

6. *Comment:* Clearly some of the responsibilities related to enforcement in the NWHI reside with other parts of NOAA or with other Federal agencies. Including such high costs for enforcement in the draft ROP greatly inflates the estimate of total funding required for maintaining and operating the Reserve.

Response: An enforcement workshop was held in May and June 2004 to gather knowledge and exchange ideas among multiple Federal and state agencies with the intent to develop a unified approach to surveillance and monitoring in the NWHI. The cost of surveillance and monitoring of the Reserve and who will bear the costs have yet to be determined. The enforcement costs in the draft ROP reflect total costs and are the best projections at this time.

7. *Comment:* NOAA's marine debris cleanup efforts should focus on areas that pose a high risk of monk seal entanglement (*i.e.*, adjacent to places where monk seal pups are born and where young seals may learn to swim and feed). Given the magnitude of the debris problem and the length of time that will likely be required to adequately clean up the entire region, the Marine Mammal Commission continues to believe that it is necessary to prioritize areas for cleanup. Therefore, the ROP should indicate the highest priority need is to remove debris from areas of particular importance to monk seals.

Response: The Desired Outcome of the Marine Debris Action Plan of the ROP was expanded to read ''To reduce threats by marine debris to natural resources in the Reserve and neighboring waters with an emphasis on preventing endangered species entanglement.'' The following statement was also added; ''Areas identified as most important for marine debris removal should be consistent with endangered species recovery efforts, such as monk seal recovery.''

8. *Comment:* The ROP does not contain enough background information on the four fisheries (lobster, pelagic species, bottomfish, and precious coral) undertaken or proposed in recent years in the NWHI. This lack of information on current NWHI stocks, allowable fishing levels, and efforts to manage these fisheries stands in sharp contrast to the more detailed discussions of other resources such as cultural and historic resources. Its brevity is inappropriate given the major focus on fishery management needs and measures in the Executive Orders. The discussion should be expanded and included in a separate action plan on fisheries.

Response: The NMSP believes the ROP contains adequate descriptions of fisheries for the purposes of implementing the Executive Order. Sanctuary designation requires an Environmental Impact Statement (EIS). The EIS will contain detailed background information on the relevant fisheries, will include a thorough analysis of issues associated with fishing activities.

9. *Comment:* The ROP should implement a mandatory domestic Vessel Monitoring System (VMS).

Response: The Executive Order does not state that a vessel monitoring system be mandatory; rather it directs the ROP to consider the use of VMS, if warranted (see Sec. 5(b)(10) of EO 13178).

Reserve Operations Plan

The EO directs that the ROP shall be directed at priority issues and actions. The EO also directs that the ROP should address such issues as coordinated management among the agencies with relevant jurisdiction in the Northwestern Hawaiian Islands, cleanup and prevention of marine debris, restoration of degraded or injured resources, research and education, enforcement and surveillance, identification and coordination with Native Hawaiian interests on cultural uses and locations, and designation of the Reserve as a National Marine Sanctuary.

The NMSP prepared the revised draft Reserve Operations Plan, following templates used for the management plans of the National Marine Sanctuary Program. The document is composed of a set of function- and issue-oriented action plans (as topically identified in the Executive Order), with supporting documentation. Each action plan focuses on strategies, and outlines what, who, why, when, and how different activities will be conducted. Following is a list of the action plans contained in the final Reserve Operations Plan:

- *Operations:* Includes interagency coordination, activity and area identification, Reserve/Sanctuary Advisory Council operations, development of fishing caps and permitting procedures, and infrastructure development;
- *Education:* Encompasses all education, outreach, and interpretive projects;
- *Native Hawaiian Cultural Resources:* Consists of all projects related to Native Hawaiian culture, uses, and locations;
- *Maritime Heritage:* Contains projects related to maritime historic resources;
- *Research and Monitoring:* Contains all projects related to research and monitoring;
- *Mapping:* Covers all projects related to developing nautical charts and maps of the NWHI;

• *Response, Damage Assessment, and Restoration:* Contains projects related to contingency planning, response, and restoration;

• *Marine Debris:* Consists of projects related to the removal of marine debris from the NWHI;

• *Enforcement:* Includes air and sea support for existing enforcement operations and expansion of a vessel monitoring system; and

• *Designation:* Consists of all projects related to the Sanctuary designation process.

The ROP provides a guide for management of the Reserve during the process of considering the Northwestern Hawaiian Islands for designation as a National Marine Sanctuary. The designation process is currently underway (66 FR 5509).

Authority: Pub. L. 106–513; Executive Order 13178; and Executive Order 13196.

Dated: February 20, 2005.

John L. Hayes,

Deputy Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 05–4541 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022505D]

Endangered Species; File No. 1509

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Jeanette Wyneken, Florida Atlantic University, Department of Biological Sciences, 777 Glades Rd., Boca Raton, FL 33431, has applied in due form for a permit to take loggerhead (*Caretta caretta*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 8, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1509.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to study whether mis-oriented turtles are able to crawl towards the ocean and swim offshore. The results of the study would help determine if these turtles remain behaviorally competent when released at beach sites and are likely to complete their offshore migration, and whether they are likely to survive and contribute to population recovery. The applicant would conduct the research on 80 loggerhead hatchlings. The sea turtle hatchlings would have a lightweight float attached to them and they would be tracked by boat or kayak as they migrate offshore. At the conclusion of its swimming trial, each hatchling would be captured to remove the float gear. If the turtle was heading properly offshore, it would be released to continue its journey. If the turtle was heading in the incorrect direction, it would be released the next afternoon in the Gulf Stream. The applicant is requesting authorization from NMFS to conduct the in-water activities relating to the research. The research activities would occur in the waters of Florida and the applicant requests a 2–year permit.

Dated: March 4, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–4621 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

March 3, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (*http://www.cbp.gov*), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Information regarding the 2005 CORRELATION will be published in the **Federal Register** at a later date. Also see

69 FR 57272, published on September 24, 2004.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 3, 2005.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 20, 2004, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2005 and extends through December 31, 2005.

Effective on March 9, 2005, you are directed to increase the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	343,470 kilograms.
301	778,532 kilograms.
332	1,144,900 dozen pairs.
333	41,216 dozen.
341/641	871,934 dozen.
345	326,139 dozen.
351/651	546,666 dozen.
352/652	2,082,692 dozen.
359–C/659–C [2]	371,895 kilograms.
434	16,854 dozen.
435	41,584 dozen.
440	2,601 dozen.
447	54,101 dozen.
448	33,293 dozen.
620	7,286,144 square meters.
632	572,450 dozen pairs.
645/646	220,969 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2004.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–997 Filed 3–8–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

March 4, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a petition for a determination that certain 100 percent cotton, double faced sateen weave, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On March 3, 2005, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of B*W*A of New York, New York alleging that certain 100 percent cotton, double faced sateen weave, flannel fabrics, of yarn-dyed, single yarns, of the specifications detailed below, classified in subheading 5209.59.0025 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that woven cotton shirts and blouses of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 24, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 3, 2005, the Chairman of CITA received a petition on behalf of B*W*A of New York, New York alleging that certain 100 percent cotton, double faced sateen weave, flannel fabrics, of yarn-dyed, single yarns, of the specifications detailed below, classified HTSUS subheading 5209.59.0025, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for woven cotton shirts and blouses that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Petitioner Style No:	5225
Fiber Content:	100% Cotton
Weight:	315-320 g/m2
Width:	148 - 152 centimeters
Thread Count:	33 - 35 warp ends per centimeter; 57 - 59 filling picks per centimeter; total 90 - 94 threads per square centimeter
Yarn Number:	50 - 52 metric warp; 23 - 25 metric filling; overall average yarn number: 28 - 30 metric
Weave:	Double faced irregular 3 X 1 sateen
Finish:	Printed on one side on yarns of different colors; napped on both sides; Sanforized

The petitioner further describes the fabric as follows:

> One face appears to be piece dyed, but in fact the filing yarns have been dyed prior to weaving. There are two sets of filling yarns, thus a loom capable of pick and pick filling insertion is required. In this instance, the warp is also dyed prior to weaving, but may be undyed as well. On the other face (intended to be the fabric back), the dyed yarns have been covered by a vivid print which extends from selvedge to selvedge. The printing is done with fiber reactive dyes, not pigments. The fabric is heavily napped on both sides.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than March 24, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–4611 Filed 3–4–05; 2:56 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

March 4, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a petition for a determination that certain 100 percent cotton, 4-thread twill weave, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On March 3, 2005, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of B*W*A of New York, New York alleging that certain 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, ring spun and plied yarns, of the specifications detailed below, classified in subheading 5208.43.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that men's and boys' woven cotton shirts of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 24, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 3, 2005, the Chairman of CITA received a petition on behalf of B*W*A of New York, New York alleging that certain 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, ring spun and plied yarns, of the specifications detailed below, classified HTSUS subheading 5208.43.0000, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for certain apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Petitioner Style No:	153, 154, 155, 156, W3004
Fiber Content:	100% Cotton
Weight:	168 - 172 g/m2
Width:	142 - 145 centimeters
Thread Count:	25 -26 warp ends per centimeter; 23-24 filling pick per centimeter; total 48-50 threads per square centimeter
Yarn Number:	35/2 - 36/2 metric warp and filling, ring spun; Overall average yarn number: 32-34 metric
Weave:	4-thread twill

Finish:	Of two or more yarns of different colors in the warp and filling, napped on both sides

The petitioner emphasizes that the yarns must be ring spun, the yarns must be plied, and the fabric is napped on both sides. The petitioner further states that because of the fabric's light weight and the fact that it is napped on both sides, it is imperative that the yarns be ring spun and plied in order to offset the degrading effects of napping on both sides.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than March 24, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–4612 Filed 3–4–05; 2:57 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

March 4, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a petition for a determination that certain 100 percent cotton, 4 thread twill weave, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On March 3, 2005, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of B*W*A of New York, New York alleging that certain 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed and ring spun single yarns, of the specifications detailed below, classified in subheading 5208.43.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that men's and boys' woven cotton shirts of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 24, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 3, 2005, the Chairman of CITA received a petition on behalf of B*W*A of New York, New York alleging that certain 100 percent cotton, 4-thread twill weave, flannel fabrics, of yarn-dyed, combed and ring spun single yarns, of the specifications detailed below, classified HTSUS subheading 5208.43.0000, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for men's and boys' woven cotton shirts that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Petitioner Style No:	5375
Fiber Content:	100% Cotton
Weight:	136 - 140 g/m2
Width:	148 - 152 centimeters
Thread Count:	38 - 40 warp ends per centimeter; 28 - 30 filling picks per centimeter; total 66 - 70 threads per square centimeter
Yarn Number:	48 - 52 metric warp and filling, ring spun, combed; average yarn number: 48 - 50 metric
Weave:	4-thread twill
Finish:	Of two or more and up to eight yarns of different colors; napped on both sides

The petitioner emphasizes that the yarns must be combed and ring spun; that yarns of at least two and as many as eight different colors will be used in both warp and filling; and the fabric must be napped on both sides.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than March 24, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–4613 Filed 3–4–05; 2:57 pm]

BILLING CODE 3510–DS

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Policy Change Regarding the Publication of Notices of Funding Availability

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (Corporation) no longer publishes Notices of Funding Availability (NOFAs) in the **Federal Register**. Instead, all Corporation NOFAs are synopsized and posted at the government-wide Internet site, *http://Grants.gov,* in accordance with the policy directive issued by the Office of Management and Budget (OMB). The full NOFA associated with a synopsis posted at Grants.gov may be accessed by following the universal resource locator (URL) link included in the synopsis, or by visiting the Corporation's Web site.

EFFECTIVE DATE: March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Marlene Zakai, Director, Office of Grants Policy and Operations, 1201 New York Avenue, NW., Washington, DC, 20525, (202) 606–5000 ext. 536 or by e-mail at *mzakai@cns.gov.*

SUPPLEMENTARY INFORMATION: On October 8, 2003, OMB issued a policy directive entitled ''Requirement to Post Funding Opportunity Announcement Synopses at Grant.gov and Related Data Elements/Format'' [68 FR 58146, October 8, 2003]. The directive requires every Federal agency that awards discretionary grants and cooperative agreements to post synopses of its funding opportunity announcements in standard format on the Internet at *http://Grants.gov* or such Web site/Internet address that may be identified by OMB. A key purpose for establishing a single government-wide Web site is to provide prospective grant applicants the opportunity to locate funding opportunities in one place rather than having to search for announcements in multiple locations. Shortly after OMB issued the directive, the Corporation began posting synopses of its NOFAs at Grants.gov. Each Corporation synopsis includes information on how to obtain the full NOFA, as well as a ULR link to the full NOFA posted on the Corporation's own Web site. The Corporation has determined that posting its funding announcements at Grants.gov and on its own Web site is both effective and efficient. Therefore, the Corporation has discontinued the policy of publishing NOFAs in the **Federal Register**.

Dated: March 3, 2005.

Marlene Zakai,

Director, Office of Grants Policy and Operations.

[FR Doc. 05–4589 Filed 3–8–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Grants to States To Improve Management of Drug and Violence Prevention Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priorities and requirements.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes priorities and requirements under the Safe and Drug-Free Schools and Communities Act (SDFSCA) National Programs for the Grants to States to Improve Management of Drug and Violence Prevention Programs. We may use one or more of these priorities and requirements for competitions in fiscal year (FY) 2005 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend the priorities and requirements to facilitate the development, enhancement, or expansion of the capacity of States and other entities that receive SDFSCA State Grants program funds to collect, analyze, and use data to improve the management of drug and violence prevention programs.

DATES: We must receive your comments on or before April 8, 2005.

ADDRESSES: Address all comments about these proposed priorities and requirements to: Deborah Rudy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E330, Washington, DC 20202–6450. If you prefer to send your comments through the Internet, use the following address: *Deborah.Rudy@ed.gov.*

You must include the term ''184R Comments'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Deborah Rudy, Telephone: (202) 260–1875 or via Internet: *Deborah.Rudy@ed.gov.*

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**.

SUPPLEMENTARY INFORMATION

Invitation to Comment

We invite you to submit comments regarding these proposed priorities and requirements. To ensure that your

comments have maximum effect in developing the notice of final priorities and requirements, we urge you to identify clearly the specific proposed priority or requirement that each comment addresses.

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 priorities and requirements. 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 priorities and requirements in room 3E330, 400 Maryland Avenue, SW., 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 priorities and requirements. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Proposed Priorities and Requirements

We will announce the final priorities and requirements in a notice in the **Federal Register**. We will determine the final priorities and requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities or requirements subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these proposed priorities or requirements, we invite applications through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Proposed Priorities

Proposed Absolute Priority-Developing, Enhancing, or Expanding the Capacity of States and Other Entities that Receive SDFSCA State Grants Funds to Collect, Analyze, and use Data to Improve the Quality of Drug and Violence Prevention Programs

Background: States and their local communities are implementing a variety of programs, activities, and strategies designed to prevent youth drug use and violence in schools. Just as policymakers, education professionals, and parents seek reliable information about student academic progress, stakeholders also need sufficient information and data to assess the nature of youth drug and violence problems in their communities, select research-based approaches to preventing these problems, and determine whether these prevention efforts are effective.

The U.S. Department of Education currently requires States to collect and report data on youth drug and violence prevention problems and prevention efforts through a uniform management information and reporting system (UMIRS) that States must establish under section 4112(c)(3) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7112(c)(3)). States also need to use objective data about school safety to meet the Unsafe School Choice Option (USCO) requirements in section 9532 of the ESEA.

States and local communities face several challenges in implementing these requirements and in turn operating and managing effective drug and violence prevention programs. These challenges may include:

- Lack of standardized collection instruments and definitions both within and across States;
- Lack of expertise related to collecting data about youth drug use and violence;
- Lack of time and other resources to support high-quality data collection and analysis in these areas;
- Unfavorable community and media reaction to high rates of youth drug use and violence that discourages full and accurate reporting; and
- Negative consequences for administrators whose schools have high rates of violent incidents.

The Department is proposing this priority therefore to provide support to States to explore strategies that will help them address these challenges so that they can enhance their capacity to collect and use data to assess and improve the implementation of their drug and violence prevention programs.

Absolute Priority: This priority would support projects to develop, enhance, or expand the capacity of States and other entities that receive SDFSCA State Grants program funds to collect, analyze, and use data to improve the management of drug and violence prevention programs. At a minimum, applicants must propose projects to develop, enhance, or expand the capacity of the State educational agency (SEA), the State agency administering the Governor's funding under the SDFSCA State Grants program, and local educational agencies and community-based organizations that receive SDFSCA State Grants program funding.

Specifically, projects must be designed to:

(a) Include activities designed to expand the capacity of local recipients of SDFSCA funds to use data to assess needs, establish performance measures, select appropriate interventions, monitor progress toward established performance measures, and disseminate information about youth drug use and violence to the public;

(b) Collect data that, at a minimum, meet the requirements of the UMIRS described in section 4112(c)(3) of the ESEA;

(c) Operate with the aid of a technology-based system for analyzing and interpreting school crime and violence data;

(d) Be consistent with the State's Performance-Based Data Management Initiative (PBDMI) strategy and produce data that can be transmitted to the U.S. Department of Education via the Department's Education Data Exchange Network (EDEN) project, which facilitates the transfer of information from State administrative records to the Department to satisfy reporting requirements for certain programs

administered by the Department, including the SDFSCA State Grants program;

(e) Be an enhancement to, or capable of merging data with, the State's student information system if such exists or if the State does not yet have a statewide, longitudinal student data system, the project should include the capacity to merge with such a system in the future; and

(f) Include validation and verification activities at the State and sub-State recipient levels designed to ensure the accuracy of data collected and reported.

Proposed Competitive Preference Priority—Use of Uniform Crime Reporting Definitions

Background: Uniform definitions of data elements make it easier for stakeholders to collect, analyze, and compare data across district, county, State, and other boundaries. The Federal Bureau of Investigation's Uniform Crime Reporting (UCR) program is the most universal crime reporting system in the country and collects information about the following crimes: Homicide; forcible rape; robbery; aggravated assault; burglary; larceny-theft; motor vehicle theft; and arson. The majority of States have a UCR program and many require mandatory reporting. Further information about the UCR is available online at *http://www.fbi.gov/ucr/ucr.htm.*

Competitive Preference Priority: The collection of incident data for projects under Priority 1 will be done in a manner consistent with the definitions and protocols developed under the Federal Bureau of Investigation's UCR program.

Other Proposed Requirements

Eligibility of Applicants: We propose that eligible applicants for this program be limited to State educational agencies (SEAs) or other State agencies administering the SDFSCA State Grants program.

We propose this requirement to focus projects on Statewide systems of data collection that support the UMIRS requirements. Local or regional projects are inconsistent with the emphasis in the SDFSCA on Statewide data collection systems for youth drug and violence prevention information.

Memorandum of Understanding: We propose that applicants be required to include a memorandum of understanding (MOU) in their application that outlines project roles and responsibilities of the participants and that contains:

1. The signatures of:

a. The authorized representative(s) for the SEA, and

b. The authorized representative(s) for the State agency (or agencies) receiving the Governor's portion of SDFSCA State Grants program funding for the State.

2. Evidence that the proposal has been reviewed by, and has the approval of, the State's chief information officer (CIO) and/or chief technology officer (CTO). The CIO and/or CTO may sign the required memorandum of understanding, or may provide a separate document including the required assurance.

We propose this requirement in order to ensure that entities responsible for the development of the UMIRS within a State will be involved in the design and implementation of any funded project, and that technical aspects of the project have the approval of the State official charged with overseeing information management and technology issues within the State.

Technology-Based System: We propose that each application be required to include a proposal for a technology-based system for collecting, analyzing, and interpreting school crime and violence data. Grant funds may be used in a variety of ways to support this system, including updating an existing infrastructure, conducting basic planning, and capacity building.

We propose this requirement to ensure that grant funds are used to support the development of a system that takes advantage of widely available technology to support the efficient collection, analysis and interpretation of school crime and violence data.

Executive Order 12866

This notice of proposed priorities and requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities and requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities and requirements, we have determined that the benefits of the proposed priorities justify the costs.

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

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

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

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvpstatemanagement/applicant.html.*

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

Dated: March 4, 2005.

(Catalog of Federal Domestic Assistance Number 84.184R Grants to States to Improve Management of Drug and Violence Prevention Programs.)

Program Authority: 20 U.S.C. 7131.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–4616 Filed 3–8–05; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and

Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Tuesday, March 22, 2005.

Time: 9 a.m.–3 p.m.

ADDRESSES: The Board will meet at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. Phone: 202–347–3000, Fax: 202–776–9182.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Counselor, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7889, fax: 202–502–7879.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002, and Executive Order 13316 dated September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

Agenda: The purpose of the meeting is to plan and coordinate Board activities for 2005–2006; to receive and deliberate on recommendations from the National Association for Equal Opportunity in Higher Education (NAFEO) and the United Negro College Fund (UNCF) on final recommendations for the Reauthorization of the Higher Education Act of 1965, as amended, and to discuss other items pertinent to the Board and the Nation's HBCUs.

Additional Information: Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Tuesday, March 15, 2005. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Tuesday, March 22, 2005, between 2 p.m.–3 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Tuesday, March 15, 2005.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Dated: March 2, 2005.

Margaret Spellings,

Secretary of Education, Department of Education.

[FR Doc. 05–4543 Filed 3–8–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 16, 2005, at the headquarters of the IEA in Paris, France, in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Federation, Paris, France, on March 16, 2005, beginning at 8:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on March 16, beginning at 9:30 a.m., including a preparatory encounter among company representatives from 8:30 a.m. to 9:15 a.m. The agenda for the preparatory encounter is as follows:

I. Welcome, Review of Agenda, and Introductions.
II. Review of ERE 3 Issues.
—Regional Supply Disruptions.
—Market Understanding of Government Participants.
III. Discussion of Potential SEQ Activities.
IV. Closing and Review of Meetings of Interest to IAB Members.
—SEQ and IAB Meeting, June 21–22, 2005, Paris.
—SEQ and IAB Meeting, November 16–17, 2005, Paris (tentative).

The agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 112th Meeting.
3. Program of Work.
—Evaluation of EPPD Activities 2003–2004.
—Overview of Future Work in 2005.
4. Update on Compliance with IEP Stockholding Commitments.
—-Update on Compliance with IEP Stockholding Commitments.
—Analysis of the Reasons for Non-Compliance.
—Reports by Non-Complying Member Countries.
—Possible Measures to Assure Compliance with IEA Stockholding Commitments.
5. The Current Oil Market Situation and Emergency Preparedness.
—Report on the New York Conference ''Oil Price Formation & Speculative Activity'', November 22–23, 2004, at NYMEX.
—Discussion of Present Oil Market and Emergency Preparedness.
6. Emergency Response Exercise 3.
—Summary and Appraisal of the Third Emergency Response Training and Simulation Exercise.
7. Report on Current Activities of the IAB.
8. Policy and Other Developments in Member Countries.
—Report on U.S. Symposium on Stockholding, November 30-December 2, 2004.
—Report on KKKSZ Conference on Extended EU-Extended Security, Budapest, November 3–5, 2004.
9. Emergency Response Review Program.
—Emergency Response Review of Greece.
—Schedule of Emergency Response Reviews.

—Questionnaire Response of the Netherlands.
10. Other Emergency Response Activities.
—Report on MOS/JODI Meeting of Statisticians.
—Report on Workshop on Managing Oil Demand in Transport.
—Report on Advanced Oil and Gas Upstream Technologies—Possible Impact on Reserves.
—Progress on Project to Catalogue Member Country Emergency Legislation.
11. Activities with Non-Member Countries and International Organizations.
—Progress on IEA and EU Data Comparison.
12. Other Documents for Information.
—Emergency Reserve Situation of IEA Member Countries on January 1, 2005.
—Emergency Reserve Situation of IEA Candidate Countries on January 1, 2005.
—Monthly Oil Statistics: December 2004.
—Base Period Final Consumption: 1Q 2004–4Q 2004.
—Quarterly Oil Forecast: 1Q 2005.
—Dispute Settlement Centre: Panel of Arbitrators.
—Update of Emergency Contacts List.
13. Other Business.
—Preparations for the IEA Governing Board Meeting at the Ministerial Level, May 2–3, 2005.
—Dates of Next Meetings: June 21–22, 2005; November 16–17, 2005 (tentative).

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions (SEQ); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, March 3, 2005.

Diana D. Clark,

Acting Assistant General Counsel for International and National Security Programs.

[FR Doc. 05–4457 Filed 3–8–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TS04–271–001 and TS04–272–001]

Kinder Morgan Pipelines; Notice of Compliance Filing

March 3, 2005.

Take notice that on October 19, 2004, the Kinder Morgan Pipelines (KM Pipelines) submitted a compliance filing relating to the creation of the Choice Gas Sales Unit within the local distribution company operating unit of their parent, Kinder Morgan, Inc., in response to the Commission's Order on Requests for Waivers from the Standards of Conduct issued September 20, 2004. 108 FERC ¶ 61,243 (2004).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 10, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–978 Filed 3–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–249–001]

Kinder Morgan Pipelines; Notice of Compliance Filing

March 3, 2005.

Take notice that on October 19, 2004, the Kinder Morgan Pipelines (KM Pipelines) submitted a compliance filing explaining how the KM Pipelines have taken the steps described in their exemption request to create a Commodity Unit in response to the Commission's Order On Requests For Waivers From The Standards of Conduct issued September 20, 2004. 108 FERC ¶ 61,243 (2004).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''Subscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 10, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–979 Filed 3–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–71–000]

Mystic Development, LLC, Complainant v. Boston Edison Company, NSTAR Electric & Gas Corp., Respondents; Notice of Complaint

March 3, 2005.

Take notice that on March 2, 2005, Mystic Development, LLC (Mystic Development) filed a formal complaint against Boston Edison Company (BECo) and NSTAR Electric & Gas Corp. (NSTAR) pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2000), and 18 CFR 385.206 (2004), seeking refunds for amounts invoiced and the application of Schedule 11 of the New England Power Pool Open Access Transmission Tariff to annual facilities charges under an interconnection agreement.

Mystic Development certifies that copies of the complaint were served on the contacts for BECo and NSTAR as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protest must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern standard time on March 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–980 Filed 3–8–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0003, FRL–7882–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; The 2005 Hazardous Waste Report, EPA ICR Number 0976.12, OMB Control Number 2050–0024

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for an existing approved collection. This ICR is scheduled to expire on October 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0003, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dave Levy, Office of Solid Waste, Mail Code 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8479; fax number: (703) 308–8433; e-mail address: *levy.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0003, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected Entities: Entities potentially affected by this action are those which generate, treat, store, recycle, or dispose of hazardous waste.

Title: The 2005 Hazardous Waste Report.

Abstract: This ICR renews an ongoing information collection from hazardous waste generators and hazardous waste treatment, storage, or disposal facilities. This collection is done on a two-year cycle as required by Sections 3002 and 3004 of RCRA. The information is collected via a mechanism known as the Hazardous Waste Report for the required reporting year [EPA Form 8700–13 A/B] (also known as the Biennial Report). Both RCRA Sections 3002 and 3004 require EPA to establish standards for recordkeeping and reporting of hazardous waste generation and management. Section 3002 applies to hazardous waste generators and Section 3004 applies to hazardous waste treatment, storage, and disposal facilities. The implementing regulations are found at 40 CFR 262.40(b) and (d); 262.41(a)(1)–(5), (a)(8), and (b); 264.75(a)–(e) and (j); 265.75(a)–(e) and (j); and 270.30(l)(9). This is mandatory reporting by the respondents.

The respondents' submissions (reports) describe each generated hazardous waste, the activity by which they generated the waste, and the waste quantity; the reports also list the management method by which each waste is treated, recycled, or disposed and the quantity managed. There are a number of uses of Biennial Report data. EPA uses Biennial Report data for planning and developing regulations, compliance monitoring, and enforcement. Also, Biennial Report data allows the Agency to determine whether its regulations are having the desired effect on the generation and management of hazardous waste. For example, Biennial Report data provides information on whether waste management has shifted from one method of disposal to another. Some State uses of Report data include support of planning, fee assessment, compliance monitoring, and enforcement.

Some businesses consider some of their hazardous waste information to be Confidential Business Information (CBI). A business may, if it desires, protect its Biennial Report information from public disclosure by asserting a claim of confidentiality covering all or part of its information. When a claim is made EPA will treat the information in accordance with the confidentiality regulations in 40 CFR part 2, subpart B. EPA also ensures that the information collection procedures comply with the Privacy Act of 1974 and OMB Circular 108.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 22 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Those facilities which generate, treat, store, recycle, or dispose of hazardous waste.

Estimated Number of Respondents: 17,691.

Frequency of Response: Biennially.

Estimated Total Annual Hour Burden: 191,000.

Estimated Total Annual Cost: $9,810,000, includes $0 annualized capital and $25,000 O&M costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 3, 2005.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. 05–4587 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7882–8]

Science Advisory Board Staff Office, Clean Air Scientific Advisory Committee (CASAC), Notification of Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee to conduct a consultation on the draft Project Work Plan for Revised Air Quality Criteria for Lead.

DATES: March 28, 2005. The teleconference meeting will be held on March 28, 2005, from 1 to 4 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (five minutes or less); or wants further information concerning this teleconference meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* The CASAC, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the SAB Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The Clean Air Act requires periodic update of the Air Quality Criteria Document (AQCD) for Lead. Air quality criteria documents for the ''criteria'' air pollutants for which national ambient air quality standards are established provide the scientific bases for these NAAQS and are to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of such a criteria air pollutant. The previous version of the AQCD for Lead was completed in 1986, with a Supplement completed in 1990. EPA's National Center for Environmental Assessment, Research Triangle Park, NC (NCEA–RTP), completed the Project Work Plan for the current revision of the Lead AQCD and released it for public comment in January 2005. EPA has prepared this Project Work Plan for Revised Air Quality Criteria for Lead to communicate the process and timeline for development of a revised AQCD for Lead.

Technical Contact: Any questions concerning EPA's Project Work Plan for Revised Air Quality Criteria for Lead should be directed to Dr. Robert Elias, NCEA–RTP, at phone: (919) 541–4167; or e-mail: *elias.robert@epa.gov.*

Availability of Meeting Materials: NCEA–RTP has posted the draft Project Work Plan for Revised Air Quality Criteria for Lead on the National Center for Environmental Assessment Web site at URL: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=113963.* In addition, the SAB Staff Office will post a copy of the final agenda for this teleconference consultative meeting on the SAB Web site at: *http://www.epa.gov/sab* (under ''Meeting Agendas'') in advance of the CASAC teleconference.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its meetings or teleconferences will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a meeting or teleconference will be limited to a total time of five minutes (unless otherwise indicated). Requests to provide oral comments must be in writing (preferably via e-mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting or teleconference in order to reserve time on the meeting agenda. *Written Comments:* The SAB Staff Office accepts written comments until the date of the meeting or teleconference (unless otherwise stated). Copies of both oral and written public comments and other presentation materials should be provided to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, and Rich Text files (in IBM–PC/Windows 98/2000/XP format)). All comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting or teleconference so that these comments may be made available to the CASAC for their consideration.

Dated: February 28, 2005.

Richard Albores,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–4583 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7882–7]

Science Advisory Board Staff Office, Clean Air Scientific Advisory Committee (CASAC), Notification of Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee to review and approve the advisory report of the CASAC Ambient Air Monitoring and Methods (AAMM) Subcommittee (Subcommittee) regarding EPA's implementation plan for the Agency's National Ambient Air Monitoring Strategy (NAAMS).

DATES: The teleconference meeting will be held on March 21, 2005, from 1 to 3 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (five minutes or less); or wants further information concerning this teleconference meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *CASAC and the AAMM Subcommittee:* The CASAC, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the SAB Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB Staff Office established the CASAC AAMM Subcommittee in early 2004 as a standing subcommittee to provide the EPA Administrator, through the CASAC, with advice and recommendations, as necessary, on topical areas related to ambient air monitoring, methods and networks. The Subcommittee complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: In response to a request from EPA's Office of Air and Radiation (OAR), a subcommittee of the CASAC provided advice and recommendations on the implementation aspects of EPA's Final Draft NAAMS at a face-to-face,

public meeting held on December 15, 2004 at the SAB Conference Center in Washington, DC. Subsequent to that meeting, the Subcommittee drafted an advisory report for the CASAC's consideration. Detailed summary information on both the establishment of the CASAC AAMM Subcommittee and the history of EPA's Final Draft NAAMS is contained in a previous **Federal Register** notice (69 FR 68901, November 26, 2004).

Availability of Meeting Materials: The Agency's final draft National Ambient Air Monitoring Strategy document is posted on EPA's Ambient Monitoring Technology Information Center (AMTIC) Web site at URL: *http://www.epa.gov/ttn/amtic/files/ambient/monitorstrat/allstrat.pdf*. Any questions concerning the Agency's NAAMS should be directed to Mr. Tim Hanley, Office of Air Quality Planning and Standards (OAQPS), at phone: (919) 541–4417; or e-mail: *hanley.tim@epa.gov*. The CASAC AAMM Subcommittee's draft advisory report and the final agenda for this teleconference meeting will be made available on the SAB Web site at: *http://www.epa.gov/sab/panels/casac_aamm_subcom.html* and *http://www.epa.gov/sab* (under ''Meeting Agendas''), respectively, in advance of the CASAC teleconference.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its meetings or teleconferences will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a meeting or teleconference will be limited to a total time of five minutes (unless otherwise indicated). Requests to provide oral comments must be in writing (preferably via e-mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting or teleconference in order to reserve time on the meeting agenda. *Written Comments:* The SAB Staff Office accepts written comments until the date of the meeting or teleconference (unless otherwise stated). Copies of both oral and written public comments and other presentation materials should be provided to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, and Rich Text files (in IBM–PC/Windows 95/98 format)). All comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting or teleconference so that these comments may be made available to the CASAC for their consideration.

Dated: February 25, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–4588 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0060; FRL–7701–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review Toxic Substances Control Act inventory nomenclature for enzymes and proteins.

DATES: The meeting will be held on May 3–4, 2005, from 8:30 a.m. to approximately 5 p.m, eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before March 21, 2005.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn- Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington,VA 22209. The telephone number for the Holiday Inn- Rosslyn at Key Bridge is (703) 807–2000.

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

Nominations, requests to present oral comments, and special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2005–0060 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul I. Lewis, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: *lewis.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, the Food Quality Protection Act of 1996 (FQPA), and the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0060. 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/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available as soon as possible, but no later than mid April 2005. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

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 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 in hard copy 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 (preferred), through hand delivery or courier, or by mail. 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. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0060. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0060. 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 deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. 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 hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0060. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0060.

D. 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. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this document.
6. 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.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2005–0060 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, April 27, 2005, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, April 27, 2005, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Enzyme chemistry, proteomics, and practical enzymology technique. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before March 21, 2005. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as the primary scientific peer review mechanism of the United States Environmental Protection Agency (EPA), Office of Prevention, Pesticides and Toxic Substances and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides-related issues, including TSCA issues, as to the impact on health and the environment of regulatory actions.

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review the Toxic Substances Control Act (TSCA) inventory nomenclature for enzymes and proteins. The EPA is responsible for the implementation of TSCA, which authorizes the Agency to review commercial chemicals and determine their potential risk. To that end, the Agency is required, under section 8(b) of TSCA, to develop, update, and maintain the TSCA Chemical Inventory, a listing of chemical (and biological) substances existing in U.S. commerce. Substances that are not included on the Inventory are considered to be ''new'' substances and are subject to Premanufacture Notification (PMN) reporting requirements under section 5(a) of TSCA before such substances can be manufactured in or imported into the United States for a commercial purpose.

In developing the initial inventory, as mandated under section 8(b) of TSCA, the Agency promulgated the Inventory Reporting Regulations in 1977. A total of 62,000 substances were reported for the initial Inventory, including some 150 enzymes. Since the Agency did not prescribe under the 1977 rule how specific the enzymes should be identified under TSCA, the Agency subsequently discovered that most of the enzyme listings reported for the Inventory were so broadly defined that each listing would actually cover a category of commercial enzymes. If these broad categories are not narrowed, the Agency would not be able to review new enzymes under TSCA.

In order for the Agency to be able to review commercial enzymes and their potential risk, specific nomenclature must be developed to facilitate the accurate, unique, and unambiguous identification of enzymes for the purposes of TSCA. The Agency has proposed the use of a set of four identifiers for the identification of enzymes. The Agency is seeking the FIFRA SAP's advice to address a set of issues associated with the use of these identifiers. Such issues include the level of specificity for each identifier and how each identifier can be used to differentiate enzymes in commerce.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 25, 2005.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–4468 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0057; FRL–7701–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 6, 2005, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Schultz, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8186; e-mail address:*schultz.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the

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

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

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 234 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000004–00165	Bonide Methoxychlor 25% E Insecticide	Methoxychlor
000004–00184	Bonide Bulb Dust	Methoxychlor
		Thiram
000004–00361	Bonide Oftanol Grub Beater	Isofenphos
000016–00111	Dragon Dipel Dust	Bacillus thuringiensis subsp. kurstaki
000016–00171	Dragon Systemic Rose & Flower Care	Disulfoton
000070–00271	Rigo Turf Saver Granular Insecticide	Isofenphos
000099–00083	Watkins Toilet Bowl Cleanser	Hydrochloric acid
		Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
000100–00890	Mertect LSP Fungicide	Thiabendazole
000100–01155	Impasse Premi Pel	lambda-Cyhalothrin
000100 CO–00–0008.	Dividend XL	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 ID–00–0001.	Mertect LSP Fungicide	Thiabendazole
000100 ID–00–0002.	Mertect LSP Fungicide	Thiabendazole
000100 MT–03–0009.	Mertect LSP Fungicide	Thiabendazole
000100 ND–01–0013.	Mertect LSP Fungicide	Thiabendazole
000100 NE–02–0002.	Mertect LSP Fungicide	Thiabendazole
000100 OR–00–0012.	Orbit Fungicide	Propiconazole
000100 OR–00–0014.	Fulfill	1,2,4-Triazin-3(2H)-one, 4,5-dihydro-6-methyl-4-(3-pyridinylmethylene)amino-, (E)-
000100 OR–00–0015.	Fulfill	1,2,4-Triazin-3(2H)-one, 4,5-dihydro-6-methyl-4-(3-pyridinylmethylene)amino-, (E)-
000100 OR–01–0011.	Cyclone Concentrate/Gramoxone Max	Gas cartRidge (as a device for burrowing animal control)
		Paraquat dichloride

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000100 OR–98–0015.	Caparol 4L Herbicide	Prometryn
000100 OR–99–0050.	Dual Magnum Herbicide	S-Metolachlor
000100 WA–00–0027.	Diquat Herbicide	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
000100 WA–01–0011.	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 WA–01–0013.	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 WA–01–0014.	Cyclone Concentrate/Gramoxone Max	Paraquat dichloride
000100 WA–04–0014.	Gramoxone Max Herbicide	Paraquat dichloride
000100 WA–95–0028.	Fusilade DX	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, (R)-
000100 WA–95–0029.	Fusilade DX	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, (R)-
000100 WA–98–0031.	Fusilade DX Herbicide	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, (R)-
000100 WA–99–0006.	Warrior T Insecticide	lambda-Cyhalothrin
000100 WA–99–0012.	Mertect LSP Fungicide	Thiabendazole
000100 WA–99–0013.	Mertect LSP Fungicide	Thiabendazole
000228–00415	Riverdale Tipa-D 4 Herbicide	2,4-D, triisopropanolamine salt
000239–02134	Ortho Systemic Rose & Flower Care 8-12-4	Disulfoton
000239–02618	Ortho Atrazine Plus St. Augustine Lawn Weeder.	Atrazine
000241–00281	Prowl MC-60 Herbicide	Pendimethalin
000241–00284	Prowl WP Herbicide	Pendimethalin
000241–00353	Contour Herbicide	Atrazine
		Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-5-e
000264–00576	Icon 80 WG Insecticide	Fipronil
000264–00577	Icon 6.2 FS	Fipronil
000264–00580	Icon 6.2SC Insecticide	Fipronil
000264–00625	Ovasyn	Amitraz
000264–00668	Liberty ATZ Herbicide	Atrazine
		Glufosinate
000264–00769	Axiom AT	Atrazine
		Metribuzin
		Flufenacet

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000264 AZ–85–0007.	Di-Syston 8	Disulfoton
000264 OR–82–0049.	Temik 15 G Aldicarb Pesticide	Aldicarb
000264 SD–00–0003.	Axiom AT	Atrazine
		Metribuzin
		Flufenacet
000264 TX–00–0008.	Aztec 2.1% G	Cyfluthrin
		Phostebupirim
000264 TX–97–0002.	Aztec 2.1% Granular	Cyfluthrin
		Phostebupirim
000264 WA–00–0023.	Phaser 3EC Insecticide	Endosulfan
000264 WA–00–0028.	Carzol SP Miticide/insecticide In Water Soluble Package.	Formetanate hydrochloride
000264 WA–87–0008.	Sencor Df 75% Dry Flowable Herbicide	Metribuzin
000264 WA–93–0020.	Bayleton 50% Wettable Powder	Triadimefon
000279 IL–98–0002	Furadan 4F Insecticide/Nematicide	Carbofuran
000279 KY–01–0001.	Pounce 3.2 EC Insecticide	Permethrin
000279 WA–04–0002.	Spartan Herbicide	Sulfentrazone
000352 WA–02–0005.	Oust XP Herbicide	Sulfometuron
000400–00411	Terraclor 6.5% Plus Di-Syston 6.5% Granular	Disulfoton
		Quintozene
000400 WA–97–0010.	Comite Agricultural Miticide	Propargite
000432–00798	Turbocide with SBP-1382 Insecticide	Resmethrin
000432–01287	Di-Syston 68% Concentrate	Disulfoton
000524–00490	MON-8413 Herbicide	Acetochlor
000524–00493	MON 58420 Herbicide	Atrazine
		Glyphosate-isopropylammonium
		Acetochlor
000524–00510	MON 78102 Herbicide	Atrazine
		Glyphosate-isopropylammonium
		Acetochlor
000524–00513	MON 78103 Herbicide	Glyphosate-isopropylammonium

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
.....	.....	Acetochlor
000524 WA–02–0021.	Roundup Custom Herbicide	Glyphosate-isopropylammonium
000534–00097	FS Atrazine 4L Herbicide	Atrazine
000538–00225	Grub Control	Isofenphos
000554–00142	DB-Green	Lindane
.....	.....	Maneb
000655–00456	Prentox Diazinon 50W Insecticide	Diazinon
000655–00459	Prentox Diazinon AG500 Insecticide	Diazinon
000655 HI–90–0007.	Prentox Diazinon AG500	Diazinon
000675–00015	Lehn & Fink Instrument Germicide	2-Benzyl-4-chlorophenol
.....	.....	o-Phenylphenol
000769–00674	SMPC Industrial Roach & Ant Spray	Propoxur
000769–00761	B-Gone Industrial & Household Residual Insecticide.	Propoxur
000769–00792	Superior B Gone	Propoxur
000769–00807	Superior B-Gone Concentrate	Propoxur
000769–00817	Propoxur 2% Bait Insecticide	Propoxur
000769–00822	TRAC Oftanol Insecticide 1.5% Granular	Isofenphos
000769–00823	Max-Tox 151	Propoxur
000769–00830	SMCP 24-4-12 Fertilizer with Oftanol	Isofenphos
000769–00917	Science Household Insect Bomb	Propoxur
000769–00929	Wasp + Hornet Jet Spray	Propoxur
.....	.....	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
.....	.....	Piperonyl butoxide
.....	.....	Pyrethrins
000769–00935	Wasp and Hornet I	Propoxur
.....	.....	Piperonyl butoxide
.....	.....	Pyrethrins
000769–00943	Turfic Weeder-Feeder for St. Augustine Grass	Atrazine
001021–01419	Multicide Intermediate 2208	Tetramethrin
.....	.....	Phenothrin
001021–01460	Multicide Pressurized Spray, F-2269	Phenothrin
001381–00159	Wilfarm Atrazine 90DF	Atrazine
001381–00162	Agrosol T Flowable Systemic Soybean Seed Treatment.	Thiabendazole
.....	.....	Thiram

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
001381–00163	Agrosol Pour-On Systemic Soybean Seed Treatment.	Thiabendazole
		Thiram
001381–00165	Agrox Premiere	Lindane
		Diazinon
		Captan
		Metalaxyl
001381–00169	Granox Plus	Maneb
		Thiabendazole
001381–00186	Prozine 4L	Atrazine
001677–00150	Pennsan NR	Phosphoric acid
		Dodecylbenzenesulfonic acid
002935–00388	Diazinon 4 Spray	Diazinon
002935 WA–92–0045.	Wilbur-Ellis Diazinon 4 Spray	Diazinon
005011–00060	Formula GH-18	Naled
005481–00225	Technical Lindane	Lindane
005481–00264	Royal Brand Polyram 3.5 Dust Fungicide	Metiram
005481–00415	PCNB Disulfoton Granules 6.5-6.5	Disulfoton
		Quintozene
005481 WA–97–0015.	Vapam HL Soil Fumigant	Metam-sodium
005887–00065	Black Leaf Giant Roach Traps Kills Roaches	Propoxur
005887–00074	Blackleaf Wasp & Hornet Spray Bomb	Propoxur
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
005887–00076	Black Leaf Roach and Ant Killer	Propoxur
		4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
007501–00181	Storcide E.C.	Chlorpyrifos-methyl
		Cyfluthrin
007969–00070	Polyram 80 WP Fungicide	Metiram
008660–00012	Herbicide Granules Formula A	Atrazine
008660–00018	Sta-Green St. Augustine & Centipede Weed	Atrazine
008660–00032	Vertagreen Fertilizer for Professional Use with Atrazin.	Atrazine

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
008660–00041	Vertagreen Weed and Feed 20-3-5	Atrazine
008660–00125	Vertagreen Systemic Rose & Flower Care	Disulfoton
008660–00187	Hall's Weed and Feed for St. Augustine	Atrazine
008660–00190	Holiday Flower Bed Weed Control	Trifluralin
008660–00191	Holiday Systemic 2 In 1 Rose Care	Disulfoton
008660–00204	Koos Green Turf Weed & Feed 20-4-6	Atrazine
008660–00207	Nature's Best Brand Lawn Weed and Feed	Trifluralin
		Benfluralin
008660–00223	Park Ridge 20 Weed & Feed for St. Augustine Grass.	Atrazine
008660–00224	Park Ridge Weed & Feed for St. Augustine Grasses.	Atrazine
008660–00245	Vigro Weed Control & Lawn Fertilizer	Atrazine
009404–00072	St. Augustine Lawn Weed Killer (40.8% Flowable Atrazine.	Atrazine
009779–00210	Diazinon 4AG	Diazinon
009779–00254	Riverside Atrazine 80W	Atrazine
009779–00255	Atrazine 4l	Atrazine
009779–00348	Moxy + Atrazine	Bromoxynil octanoate
		Atrazine
009779–00359	Magic Carpet Fertilizer with Atrazine 0.92%	Atrazine
009779–00360	Magic Carpet Fertilizer with Atrazine 0.76%	Atrazine
010163–00163	Gowan Diazinon 50 WSB	Diazinon
010163–00169	Imidan 70-WP Agricultural Insecticide	Phosmet
010163–00172	Imidan Technical Organophosphorus Insecticide.	Phosmet
010163–00175	Imidan 50-WSB	Phosmet
010163–00184	Imidan 70-WSB	Phosmet
010163–00215	Imidan 2.5-EC	Phosmet
010163–00219	Metasystox-R 50% Concentrate	Oxydemeton-methyl
010163–00220	Metasystox-R Spray Concentrate	Oxydemeton-methyl
010163–00241	Gowan Diazinon 5F	Diazinon
010163 CA–94–0027.	Gowan Diazinon 50 WSB	Diazinon
010163 MT–96–0002.	Metasystox-R Spray Concentrate	Oxydemeton-methyl
010163 OR–01–0009.	Savey 2E	Hexythiazox
010163 OR–94–0017.	Botran 75 W	Dicloran

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
010163 WA–01–0028.	Imidan 70-WP Agricultural Insecticide	Phosmet
011474–00055	Sungro Combo Water Base	Chlorpyrifos
		Piperonyl butoxide
		Pyrethrins
011474–00066	Sungro Dursbo	Chlorpyrifos
		Piperonyl butoxide
		Pyrethrins
011715–00347	Security Brand Purge 2 Lawn Weed Killer	Atrazine
019713–00145	Drexel D-264 Plus Captan Seed Protectant	Diazinon
		Captan
019713–00262	Drexel 25% Lindane Seed Treater	Lindane
019713–00375	Drexel Atrazine Technical II	Atrazine
019713–00412	Drexel Metolachlor Technical	Metolachlor
019713 CA–97–0035.	Drexel Diazinon Insecticide	Diazinon
019713 OR–95–0032.	Ida, Inc. Diuron 80W	Diuron
028293–00239	Unicorn Diazinon 14G Granular Insecticide	Diazinon
028293–00272	Unicorn 1.5% Granular	Isofenphos
032802–00019	Dursban Insecticide 0.7 Plus Fertilizer	Chlorpyrifos
032802–00020	Dursban 1.14 Granular Lawn and Turf Insect Control.	Chlorpyrifos
032802–00021	Dursban 1.14 Plus Lawn Fertilizer	Chlorpyrifos
032802–00022	Dursban 2.32G	Chlorpyrifos
032802–00039	Dursban .5 Granules Insecticide	Chlorpyrifos
032802–00049	Dursban 100 Granules	Chlorpyrifos
034704–00705	Cotoran Technical	Fluometuron
034704–00822	Weed and Feed for St. Augustine Grass	Atrazine
034704 CA–90–0004.	Diazinon G-14	Diazinon
034704 OK–89–0006.	Clean Crop Atrazine 4L Herbicide	Atrazine
042056–00011	Kernel Guard	Lindane
		Diazinon
		Captan
042056–00015	TCI Mancozeb-Lindane Seed Treatment	Lindane
		Mancozeb
042056–00016	TCI Mancozeb-Lindane Ready-To-Use Seed Treatment.	Lindane

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
.....	.....	Mancozeb
042056–00018	TCI Captan-Diazinon Seed Treatment	Diazinon
.....	.....	Captan
048273–00006	Marman Paraquat Concentrate	Paraquat dichloride
051036–00009	Micro Flo Atrazine 80W Herbicide	Atrazine
051036–00070	Micro Flo Diazinon 14G	Diazinon
051036–00093	Micro Flo Diazinon 5G AG	Diazinon
051036–00157	Oftanol 1-5G Insecticide	Isofenphos
051036–00159	Micro Flo Atrazine 80W Herbicide	Atrazine
051036–00259	Chlorpyrifos 2.32 Bait	Chlorpyrifos
051036–00320	Tribufos 6EC	Tribuphos
051036–00324	Tribufos Technical Defoliant	Tribuphos
051036–00404	Picloram Acid Technical	Picloram
051036–00414	Picloram K-Salt Technical	Picloram-potassium
051036–00419	Picloram Tipa Technical	2-Pyridinecarboxylic acid, 4-amino-3,5,6-trichloro-, compd. with 1,1',1''-nitrilotris(2-prop
051036 HI–97–0005.	Diazinon 50W	Diazinon
051036 TX–01–0013.	Micro Flo Diazinon 14G	Diazinon
062719–00014	Dursban 1/2 G Granular	Chlorpyrifos
062719–00035	Dursban Turf Insecticide	Chlorpyrifos
062719–00038	Lorsban 50-Sl Wettable Powder	Chlorpyrifos
062719–00039	Lorsban 50W Wettable Powder	Chlorpyrifos
062719–00054	Dursban 1-D	Chlorpyrifos
062719–00068	Dursban 50w	Chlorpyrifos
062719–00167	Equity	Chlorpyrifos
062719–00239	Broadstrike*+M	Metolachlor
.....	.....	Flumetsulam
062719–00240	Broadstrike* SF+M	Metolachlor
.....	.....	Flumetsulam
062719–00255	Dursban 50W-N In Water Soluble Packets	Chlorpyrifos
062719–00293	Dursban 75WG	Chlorpyrifos
062719–00295	Lorsban 30G	Chlorpyrifos
062719–00316	Dursban* Plus Fertilizer 2	Chlorpyrifos
062719–00349	Lentrek 6	Chlorpyrifos
062719–00350	XRM-5222	Chlorpyrifos
062719–00354	Dursban 30 SEC	Chlorpyrifos

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
062719–00380	Lorsban 12.6%	Chlorpyrifos
062719–00382	Chlorfos 4E Insecticide	Chlorpyrifos
062719–00383	Chlorfos 15G	Chlorpyrifos
062719 AZ–02–0003.	Goal 2XL Herbicide	Oxyfluorfen
062719 AZ–94–0004.	Lorsban 4E-Hf	Chlorpyrifos
062719 CA–94–0017.	Lorsban 4E-HF	Chlorpyrifos
062719 FL–92–0007.	Lorsban 50W	Chlorpyrifo
062719 ID–86–0017.	Dow Dursban 4E Insecticide	Chlorpyrifos
062719 IN–96–0004.	Goal (r) 2XL Herbicide	Oxyfluorfen
062719 LA–96–0005.	Dursban TC Concentrate	Chlorpyrifos
062719 LA–96–0007.	Equity Termiticide Concentrate	Chlorpyrifos
062719 MI–88–0004.	Kerb(r) 50W Herbicide	Propyzamide
062719 MN–96–0003.	Lorsban 4E-SG	Chlorpyrifos
062719 MS–91–0008.	Equity Termiticide Concentrate	Chlorpyrifos
062719 MS–92–0010.	Dursban TC	Chlorpyrifos
062719 MS–93–0012.	Dursban 4E Insecticide	Chlorpyrifos
062719 MS–96–0008.	Dursban TC Concentrate	Chlorpyrifos
062719 MS–96–0009.	Equity Termiticide Concentrate	Chlorpyrifos
062719 MS–96–0010.	Dursban TC Concentrate	Chlorpyrifos
062719 MS–96–0014.	Dursban TC Concentrate	Chlorpyrifos
062719 ND–95–0006.	Lorsban 4E-SG	Chlorpyrifos
062719 OR–00–0001.	Goal 2XL Herbicide	Oxyfluorfen
062719 SC–96–0003.	Dursban TC Concentrate	Chlorpyrifos
062719 SC–96–0004.	Dursban TC Concentrate	Chlorpyrifos
062719 SC–96–0005.	Equity Termiticide Concentrate	Chlorpyrifos

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
062719 SD–02–0002.	Goal 2XL Herbicide	Oxyfluorfen
062719 SD–02–0003.	Goal 2XL Herbicide	Oxyfluorfen
062719 TN–90–0007.	Dursban Turf Insecticide	Chlorpyrifos
064864–00046	Sealbrite Lustre-Dry with Thiabendazole	Thiabendazole
066222–00031	Cotoran 80W Herbicide	Fluometuron
066222–00069	Turf!® EZ	Propanil
066222–00070	Alachlor Technical	Alachlor
066222–00071	Shroud Herbicide	Alachlor
066222 OR–01–0026.	Galigan 2E	Oxyfluorfen
066222 OR–99–0004.	Linex 50 DF	Linuron
066330–00019	Isotox Seed Treater (f)	Lindane
		Captan
067760 OR–99–0058.	Cheminova Methyl Parathion 4 EC	Methyl parathion
067837 OR–94–0021.	Omite-CR Agricultural Miticide	Propargite
067837 WA–94–0007.	Omite-CR Agricultural Miticide	Propargite

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180-day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000004	Bonide Products, Inc., 6301 Sutliff Rd., Oriska, NY 13424
000016	Dragon Chemical Corp., 71 Carolyn Blvd, Farmingda, NY 11735/ENT≤

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000070	Value Gardens Supply, LLC, D/B/A Garden Value Supply, PO Box 585, St. Jose, MO 64502
000099	Watkins, Inc., 150 Liberty Street, Wino, MN 55987
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, PO Box 18300, Greensbo, NC 274198300
000228	Nufarm Americas Inc., 1333 Burr Ridge Parkway, Suite 125A, Burr Rid, IL 605270866
000239	The Ortho Business Group, D/B/A The Scotts Co., Po Box 190, Marysvil, OH 43040
000241	BASF Corp., PO Box 13528, Research Triangle Pa, NC 277093528

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Pa, NC 27709
000279	FMC Corp.Agricultural Products Group, 1735 Market St, Philadelph, PA 19103
000352	E.I. Du Pont De Nemours & Co., Inc., Dupont Crop Protection (S300/427), PO Box 30, Newa, DE 197140030
000400	Crompton Mfg. Co., Inc., 74 Amity Rd, Betha, CT 065243402
000432	Bayer Environmental Science, A Business Group of Bayer Cropscience LP, 95 Chestnut Ridge Rd., Montva, NJ 07645

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000524	Monsanto Co, Agent For: Monsanto Co., 1300 I Street, Nw, Suite 450 E., Washingt, DC 20005
000534	Growmark Inc., 1701 Towanda Ave, Bloomingt, IL 61701
000538	Scotts Co., The, 14111 Scottslawn Rd, Marysvil, OH 43041
000554	Agsco Inc., PO Box 13458, Grand For, ND 582083458
000655	Prentiss Inc., C.B. 2000, Floral Pa, NY 110012000
000675	Reckitt Benckiser Inc., Morris Corporate Center Iv, PO Box 0225, Parsippa, NJ 070540225
000769	Value Gardens Supply, LLC, D/b/a Value Garden Supply, PO Box 585, St. Jose, MO 64502
001021	Mclaughlin Gormley King Co, 8810 Tenth Ave North, Minneapol, MN 554274372
001381	Agriliance, LLC, PO Box 64089, St. Pa, MN 551640089
001677	Ecolab Inc., 370 Wabasha St. Ecolab Center, St Pa, MN 55102
002935	Wilbur Ellis Co., PO Box 1286, Fres, CA 93715
005011	Aire-Mate Inc., PO Box 406, Westfie, IN 46074
005481	Amvac Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Bea, CA 926601706
005887	Value Gardens Supply, LLC, D/B/A Value Garden Supply, Po Box 585, St. Jose, MO 64502
007501	Gustafson LLC, PO Box 660065, Dall, TX 75266
007969	BASF Corp., Agricultural Products, PO Box 13528, Research Triangle Pa, NC 277093528
008660	Sylorr Plant Corp., PO Box 142642, St. Lou, MO 631140642
009404	H.R. Mclane, Inc., Agent For: Sunniland Corp., 7210 Red Rd., Suite 206A, Mia, FL 33143
009779	D. O'Shaughnessy Consulting Inc., Agent For: Agriliance, LLC, 21 Birch Parkway, Spar, NJ 07871

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
010163	Gowan Co., PO Box 5569, Yu, AZ 853665569
011474	Sungro Chemicals, Inc., PO Box 24632, Los Angel, CA 90024
011715	Speer Products Inc., 4242 B.F. Goodrich Blvd., Memph, TN 381810993
019713	Drexel Chemical Co., PO Box 13327, Memph, TN 381130327
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwat, FL 33762
032802	Howard Johnson's Enterprises Inc., 700 W. Virginia St Ste 222, Milwauk, WI 532041548
034704	Loveland Products, Inc., PO Box 1286, Greel, CO 80632
042056	Trace Chemicals LLC, 2320 Lakecrest Drive, Pek, IL 615546637
048273	Nufarm Co., Agent For: Marman USA Inc., 1333 Burr Ridge Parkway ı125a, Burr Rid, IL 60527
051036	Micro-Flo Co. LLC, 530 Oak Ct. Drive, Memph, TN 38117
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2e225, Indianapol, IN 462681054
064864	Pace International LLC, 1011 Western Ave. Suite 807, Seatt, WA 98104
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave.- Ste 1100, New Yo, NY 10176
066330	Arvesta Corp., 100 First Street, Suite 1700, San Francis, CA 94105
067760	Cheminova Inc., 1700 Route 23 - Ste 300, Way, NJ 07470
067837	U.S. Hop Industry Plant Protection Committee, PO Box 1207, Mox, WA 98936

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before September 6, 2005. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 1, 2005.

Kathleen Knox,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 05–4582 Filed 3–8–05; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0050; FRL–7702–2]

Petition to Modify or Revoke Tolerances Established for Alachlor, Chlorothalonil, Methomyl, Metribuzin, and Thiodicarb; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA requests public comment on a petition, dated December 17, 2004, from the States of California, the Commonwealth of Massachusetts, Connecticut, and New York, available in docket identification (ID) number OPP–2005–0050, requesting that the Agency modify or revoke all tolerances for the pesticides alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb. The petitioner States request this action to obtain what they believe would be proper application of the additional ten-fold safety factor for the protection of infants and children as provided by the Food Quality Protection Act (FQPA).

DATES: Comments, identified by docket ID number OPP–2005–0050, must be received on or before May 9, 2005.

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

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8000; fax number: (703) 308–8005; e-mail address: *caulkins.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0050. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0050. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0050. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0050.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0050. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

EPA requests public comment during the next 60 days on a petition (available in docket ID number OPP–2005–0050) received from California, Connecticut, Massachusetts, and New York, requesting that the Agency modify or revoke all tolerances (maximum legal residue limits) for the pesticides alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb. The petitioners claim that EPA, in assessing whether these tolerances met the requirements of FQPA, failed to properly apply the additional ten-fold safety factor for the protection of infants and children as provided by FQPA. The petitioners argue that the full ten-fold factor should have been retained due to data gaps concerning cumulative effects from pesticides with a common mechanism of toxicity, developmental neurotoxicity, and endocrine effects. Failure to retain the full ten-fold safety factor for these five pesticides, according to petitioners, has jeopardized children's health and therefore the tolerances for these pesticides must be modified or revoked.

EPA seeks public comment and input on the petition. The petition can be found in full in EPA's electronic public docket. The Internet address for EPA's electronic docket is *http://www.epa.gov/edocket/*. To access the petition, select ''View EPA Headquarters Material Available for Comment'' from the menu on the left side of the screen. The docket will then display all matters currently open for comment. Scroll down to docket ID number OPP–2005–0050 and select it. On the following screen you have the ability to submit comments as well as view the petition. EPA's assessment of whether the tolerances for alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb comply with the new safety standard in FQPA is contained in the Reregistration Eligibility Decision documents (REDs) for these pesticides which are available on EPA's website at *http://*

www.epa.gov/pesticides/reregistration/status.htm/.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 28, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–4469 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0035; FRL–7699–4]

Benthiavalicarb-Isopropyl; Notice of Filing Petition for the Establishment of Tolerances on Imported Grapes and Tomatoes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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

DATES: Comments, identified by docket identification (ID)number OPP–2005–0035, must be received on or before April 8, 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: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@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–2005–0035. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 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.

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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.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to

consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0035. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2005–0035. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0035.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0035. 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: February 18, 2005.

Betty Shackleford, Acting

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by K-I Chemical U.S.A., Inc., 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.

K-I Chemical U.S.A., Inc.

PP 3E6545

EPA has received a pesticide petition PP 3E6545 from K-I Chemical U.S.A., Inc., 11 Martine Avenue, Suite 970,

White Plains, New York 10606 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of [[isopropyl[(S)-1-[(R)-1-(6-fluoro-1,3-benzothiazol-2-yl)ethyl]carbamoyl-2-methylpropyl]carbamate] in or on the raw agricultural commodity imported grapes at 0.5 parts per million (ppm) and on grape processed commodities juice and wine at 0.5 ppm, as well as in or on the raw agricultural commodity imported tomato at 0.5 ppm, and tomato processed commodities at 0.5 ppm. For tomato paste the proposed tolerance is 1.5 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 metabolism of benthiavalicarb-isopropyl was investigated in grapes, tomatoes, and potatoes. The rate of degradation in grapes and tomatoes is low and the unchanged parent is the major component, accounting for 90% or more of the total radioactive residue (TRR). The metabolites were below quantifiable levels in both grapes and tomatoes. Residues in foliar treated potato tubers showed more extensive metabolism with the unchanged parent accounting for only 4.7%, unidentified metabolites 76.5%, and unextracted radioactivity, 17.5%. About 21.9% of the unidentified metabolites are present as sugar conjugates. Analysis of the potato foliage from foliage treated plants indicated that 90% of the residue is unchanged parent and that no conversion to other isomers had occurred. Metabolites in the foliage were different than in the tubers and were identified as sugar conjugates of phenyl ring hydroxylated parent. The metabolism in potatoes occurs primarily via ring hydroxylation of the parent molecule. Secondary metabolism then occurs via. conjugation of sugar to the hydroxyl group. The residue of concern can be quantified as the unchanged parent.

2. *Analytical method*. The proposed residue method involves analysis by gas chromatography with a nitrogen-phosphorous detector (GC/NPD). The limit of quantification (LOQ) for all matrices, raw agricultural and relevant processed fractions, was determined to be 0.01 ppm. The method is capable of measuring the unchanged parent as well a minor isomer present in the technical. However, the minor isomer is generally present at extremely low levels, often below the LOQ. Mean recoveries ranged from a low of 77% to a high of 112%, with standard deviations ranging from 2.0 to 18.7%.

3. *Magnitude of residues*. The maximum average field trial residue measured in grapes was 0.22 ppm, although, the majority of the data at the proposed label rates was significantly below this level. The maximum residues observed in raisins and wine were 0.16 ppm and 0.08 ppm, respectively.

The maximum average residue observed in tomatoes was 0.22 ppm from trials conducted in the greenhouse. The residues observed in the field trials were significantly lower, with the residues in two of the three trials below the LOQ. The maximum residues observed in the processed commodities (all from greenhouse treated tomatoes) were as follows: Juice at 0.06 ppm, ketchup at 0.183 ppm, canned tomatoes at 0.035 ppm, and puree at 0.21 ppm.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} in Wistar rats is >5,000 milligrams/kilogram (mg/kg).

2. *Genotoxicity*. Benthiavalicarb-isopropyl is negative in all tests conducted:

i. Reverse mutation (*S. typhimurium* and *e. coli*).

ii. *In vitro* chromosomal aberration (CHL cells),

iii. *In vitro* mouse lymphoma (L5178Y cells),

iv. *In vitro* unscheduled DNA synthesis (UDS) (rat hepatocytes),

v. *In vivo* mouse miconucleus (mouse bone marrow),

vi. *In vivo* gene mutation assay in transgenic mice (transgenic mouse liver), and

vii. *In vivo/in vitro* UDS (rat hepatocytes).

3. *Reproductive and developmental toxicity*—i. In a 2-generation reproduction study in Sprague Dawley rats receiving 0, 100, 1,000 or 10,000 ppm benthiavalicarb-isopropyl in the diet, the parental no observed adverse effect level (NOAEL) was 100 ppm based on hepatocyte hypertrophy at the next higher dose level. The reproductive NOAEL was 10,000 ppm.

ii. In a developmental toxicity study in New Zealand White rabbits receiving 0, 10, 20 or 40 mg/kg/day benthiavalicarb-isopropyl from day 6 to 28 of gestation, the maternal NOAEL was 20 mg/kg/day based on abortion and increased liver weights at the 40 mg/kg/day dose. The developmental NOAEL was 20 mg/kg/day based on increased incidence of small fetus and delayed ossification of the hindlimb talus at 40 mg/kg/day.

iii. In a developmental toxicity study in Sprague Dawley rats receiving 0, 10, 100 or 1,000 mg/kg/day from day 7 to day 19 of gestation, the maternal NOAEL was 10 mg/kg/day based on elevated liver and adrenal weights at 100 mg/kg/day. The NOAEL for developmental toxicity was 1,000 mg/kg/day.

4. *Subchronic toxicity*. i. In the 13–week feeding study with rats the dose levels were 0, 50, 200, 5,000, or 20,000 ppm in the diet. The NOAEL was 200 ppm, equivalent to 14.1 mg/kg/day and 15.3 mg/kg/day in males and females, respectively), based on blood chemistry and organ weight changes at 5,000 ppm.

ii. In the 13–week feeding study with mice, the dose levels were 0, 50, 200, 7,000, or 20,000 ppm. The NOAEL was 200 ppm (equivalent to 33.0 mg/kg/day and 45.2 mg/kg/day in males and females, respectively, based on systemic toxicity of decreased body weights, anemias, and generalized liver toxicity at 7,000 ppm.

iii. In the 3 month dog feeding study the dose levels were 0, 40, 200, or 1,000 mg/kg/day. The NOAEL was 40 mg/kg/day based on hematological and clinical chemistry changes, organ weight changes and the findings of hepatocyte hypertrophy and pigmentation in the spleen at 200 mg/kg/day.

5. *Chronic toxicity*. i. In a chronic/oncogenicity study Fisher rats received 0, 50, 200, 5,000, or 10,000 ppm of benthiavalicarb-isopropyl for up to 104 weeks. The NOAEL was 200 ppm (9.9 mg/kg/day and 12.5 mg/kg/day in males and females respectively), based on a variety of toxic effects, primarily in the liver and kidney, and adenocarcinomas of the *uterus* at 5,000 ppm.

ii. In an oncogenicity study in mice, the dietary doses were 0, 20, 100, 2,500 or 5,000 ppm. The NOAEL was 100 ppm (13.7 mg/kg/day and 18.6 mg/kg/day in males and females, respectively) based on a variety of toxic effects, primarily in the liver and kidney, and hepatocellular blastoma and carcinoma at 2,500 ppm.

iii. In a 52–week study with Beagle dogs, the dietary dose levels were 0, 4, 40, or 400 mg/kg/day. The NOAEL was 40 mg/kg/day based on increased liver weights in males and females at 400 mg/kg/day.

iv. Numerous supplemental mechanistic studies in the rodent were carried out to further elucidate the mechanisms involved in tumor formation in the lifetime rodent studies. These studies indicated that

benthiavalicarb-isopropyl behaves like a promotor following initiation with diethylnitrosamine (DEN), and does not have initiating activity. The compound did not cause oxidative damage in studies on rat or mouse liver, was a slight enzyme inducer, and did not cause hepatocyte proliferation.

6. *Animal metabolism*. Benthiavalicarb-isopropyl is rapidly absorbed at the dose levels tested in both sexes. The distribution of radioactivity was generally throughout the body, with the liver having the highest levels at all time points. Excretion was predominantly via the bile. The metabolism was complex. The predominant routes of metabolism were gluthione conjugation or hydroxylation on the benzene or valyl moieties. This resulted in a large number of metabolites, many present only in small quantities.

7. *Metabolite toxicology*. It was concluded that no specific metabolite toxicity studies were needed.

8. *Endocrine disruption*. Benthiavalicarb-isopropyl was tested for its potential to induce hormomimetic effects in ovariectimized rats, potential effects on estradiol, progesterone, LH and aromatase activity in the rat, and potential effects on thyroid hormones in the rat and mouse. Under the conditions of these studies, no endocrine disrupting activity was displayed.

C. Aggregate Exposure

1. *Dietary exposure*. There are no registered uses of benthiavalicarb-isopropyl in the United States, (U.S.) and no other tolerance petitions have been submitted to EPA for this active ingredient. Dietary exposure is limited in the U.S. to residues in/on imported grapes and tomatoes and their processed components. A Tier I exposure analysis was conducted which assumed that 100% of the imported grape and tomato products consumed in the U.S. contained residues at the proposed tolerance levels. This is a ''worst case'' scenario in two ways–the product is not and will not be registered for use in many of the countries exporting these commodities to the U.S., and it is unlikely that all residues will be at the tolerance levels. Based on the expected reference dose (RfD) of 0.1 mg/kg/day, the exposure to the general population in this worst case scenario is 0.17% of the RfD. Based on an aRfD of 0.1 mg/kg/day, the exposure to the general population in this worst case scenario is 1.18 % of the aRfD. Cancer dietary exposure estimates were also conducted, which indicate that with a very conservative Q* and linear extrapolation, the cancer risk is acceptable.

i. *Food*. This is a new chemical and there are no other food uses except for the proposed uses on grapes and tomatoes.

ii. *Drinking water*. No exposure is expected from drinking water as this is an import tolerance and no U.S. registrations are expected.

2. *Non-dietary exposure*. There are no non-occupational sources of exposure to benthiavalicarb-isopropyl for the general population due to the fact that the requested action is to establish tolerances for import purposes only.

D. Cumulative Effects

There is no evidence available to suggest that benthiavalicarb-isopropyl has a mode of action that is common with other registered pesticides. Therefore K-I Chemical U.S.A. Inc. has considered only the potential risks of benthiavalicarb-isopropyl in the exposure assessments.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above, based on the completeness and the reliability of the toxicity data, K-I Chemical U.S.A. has estimated that aggregate exposure to benthiavalicarb-isopropyl will utilize less than 1% of the RfD for the U.S. population. EPA generally has no concern for exposure below 100% of the RfD. Therefore, based on the completeness and the reliability of the toxicity data, and the exposure assessment discussed above, K-I Chemical U.S.A. concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of benthiavalicarb-isopropyl, including all anticipated dietary and all other non-occupational exposures.

2. *Infants and children*. Benthiavalicarb-isopropyl did not display reproductive toxicity in rats and the data show that pups are not more sensitive to the effects of the compound than adults are. The compound was not a developmental toxicant in the tests conducted, with only delayed growth due to maternal toxicity observed. The rat and rabbit developmental studies indicate that the fetuses were not more sensitive than the adults to the effects of the test compound. Therefore, no additional safety factor is needed for children.

Using the same worst case assumptions as for the general population, K-I Chemical concludes that the most sensitive population group for chronic assessment is children 1–6. The exposure to this group is 0.56% of the chronic RfD. For acute exposure assessment, the most sensitive population is non-nursing infants, with an exposure estimate utilizing about 5% of the acute reference dose. Therefore, based on the toxicity data and the worst case estimates of exposure, K-I Chemical U.S.A. concludes that there is a reasonable certainty that no harm will result to infants and to children from aggregate exposure to residues of benthiavalicarb-isopropyl, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

Currently there are no international tolerances.

[FR Doc. 05–4273 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0034; FRL–7698–5]

Spiromesifen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulation to use the pesticide Spiromesifen (CAS No.283594–90–1) to treat up to 7,000 acres of pepper to control potato psyllid. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0034, must be received on or before March 24, 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: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; fax number: (703) 308–5433; e-mail address: *pemberton.libby@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in petition EPA for emergency exemption under section 18 of FIFRA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0034. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0034. In contrast to EPA's

electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0034.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0034. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

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

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The California Department of Pesticide Regulation has requested the Administrator to issue a specific exemption for the use of spiromesifen on pepper to control potato psyllid. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that some growers have reported fields that were nearly unharvestable as a result of psyllid populations at levels such that the sticky exudates from the psyllid and subsequent sooty mold caused a high percentage of the fruit to be unmarketable. Although there is currently no pesticide registered for use on peppers for psyllid control, growers have used several pesticides to control other target pests in their fields, and none has had satisfactory activity against psyllid. Potential losses of over 59 million could occur without the use of spiromesifen.

The Applicant proposes to make no more than 3 applications of spiromesifen (butanoic acid, 3,3-dimethyl-,2-oxo-3(2,4,6-trimethylphenyl)-1-oxaspiro [4,4]non-3-en-4-yl ester), marketed as Oberon 2 SC Insecticide/Miticide (24% a.i.), at a maximum rate of 0.13 lbs. a.i. per acre per crop season. A maximum of 2,790 pounds of active ingredient will be applied between February 15 and November 30, 2005.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing ''use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.'' The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 17, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–4262 Filed 3–8–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

March 1, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a)

Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 9, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.601, Performance Tests; Section 76.1704(a)(b), Proof of Performance Test Data; Section 76.1705, Performance Tests (Channels Delivered).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 8,250.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Semi-annual reporting requirement; Triennial reporting requirement; Third party disclosure requirement.

Total Annual Burden: 276,125 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR part 1704 requires that proof of performance test required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with § 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d). 47 CFR 76.1705 requires that the operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers. 47 CFR 76.601(b) requires cable systems with over 1,00 subscribers to conduct semi-annual proof of performance test, triennial proof of performance tests for color testing, and otherwise conform to pertinent technical standards throughout the system. Section 76.601(c) states that the FCC or the local franchise authority (LFA) require additional tests for specified subscriber terminals to secure compliance with technical standards. Prior to requiring any additional testing, the LFA shall notify the cable operator, which is then allowed 30 days to come into compliance with any perceived signal quality problems that need to be corrected.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4596 Filed 3–8–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 1, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 9, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0404.

Title: Application for an FM Translator or FM Booster Station License.

Form Number: FCC Form 350.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal Government.

Number of Respondents: 350.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 350 hours.

Total Annual Cost: $26,250.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees and permittees of FM Translator or FM Booster stations are required to file FCC Form 350 to obtain a new or modified station license. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is then extracted from FCC Form 350 for inclusion in the subsequent license to operate the station.

OMB Control Number: 3060–0407.

Title: Section 73.3598, Period of Construction.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 80.

Estimated Time per Response: 0.75–3.0 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 120 hours.

Total Annual Cost: $6,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: When a permit is subject to tolling because construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review, 47 CFR 73.3598(c) requires a permittee to notify the Commission as promptly as possible and, in any event, within 30 days, and to provide supporting documentation. In cases where the duration of the tolling event are not known at the time that tolling is granted, Section 73.3598(d) requires the permittee to notify the Commission promptly when a relevant administrative or judicial review is resolved and/or report progress at six month intervals. Section 73.3598 (e) requires any construction permit for which construction has not been completed shall be automatically forfeited upon expiration of the construction permit. The data is used by FCC staff to ensure that legitimate obstacles are preventing permittees from the construction of broadcast facilities.

OMB Control Number: 3060–0638.

Title: Section 76.934(g), Alternative Rate Regulation Agreements.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: .50 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This rule requires that local franchising authorities, certified pursuant to 47 CFR 76.910, and small systems operated by small cable companies may enter into an alternative rate regulation agreements affecting the basic service tier and the cable programming service tier. Small systems must file with the Commission a copy of the operative alternative agreement within 30 days after its effective date. Alternative rate regulation agreements are filed with the Commission so that verification can be made the such agreements have been entered into and executed pursuant to the Commission rules.

OMB Control Number: 3060–0644.

Title: Establishing Maximum Permitted Rates for Regulated Cable Services on Small Cable Systems.

Form Number: FCC Form 1230.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 5.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 11.25 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On May 5, 1995, the Commission adopted rules that allow a small cable system owned by a small cable company to use a simplified cost-of-service procedure to set its maximum permitted rate. Pursuant to these rules, a cable system is eligible to set its maximum permitted rate with the FCC Form 1230 if it is a system with 15,000 or fewer subscribers, and it is not owned by a cable company with more than 400,000 subscribers. The data collected is used by the Commission and local franchise authorities to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under Commission regulations.

OMB Control Number: 3060–1001.

Title: Application for Extension of Time to Construct a Digital Television Broadcast Station.

Form Number: FCC Form 337.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 300.

Estimated Time per Response: 0.5–4 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 250 hours.

Total Annual Cost: $150,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 337 will be used by Digital Television (DTV) permittees to apply for an extension of time within which to construct a DTV broadcast station. Applicants must retain documentation fully detailing and supporting the representations made in the FCC Form 337. The extension request is used by FCC staff to determine whether a broadcaster should be afforded additional time to construct its facilities. Additionally, applicants choosing to request special temporary authority to commence digital operation must specify the technical facilities and certify that the facilities are in compliance with FCC rules. The data is used by FCC staff to determine whether a broadcaster's operation is consistent with allotted parameters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4597 Filed 3–8–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting, Open Commission Meeting, Thursday, March 10, 2005

March 3, 2005.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 10, 2005, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Consumer & Governmental Affairs	*Title:* Truth-in-Billing and Billing Format (CC Docket No. 98–170) and National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing (CG Docket No. 04–208). *Summary:* The Commission will consider a Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking regarding the truth-in-billing rules and a related petition for declaratory ruling filed by the National Association of State Utility Consumer Advocates.

Item No.	Bureau	Subject
2	Office of Engineering and Technology Wireless and Tele-Communications.	*Title:* Wireless Operations in the 3650–3700 MHz Band (ET Docket No. 04–151); Wireless Operations in the 3650–3700 MHz Band; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band (ET Docket No. 02–380); and Amendment of the Commission's Rules with Regard to the 3650–3700 MHz Government Transfer Band (ET Docket No. 98–237). *Summary:* The Commission will consider a Report and Order and Memorandum Opinion and Order concerning the use of the 3650–3700 MHz Band.
3	Office of Engineering and Technology	*Title:* Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies (ET Docket No. 03–108). *Summary:* The Commission will consider a Report and Order on the use of cognitive radio technologies to facilitate opportunities for more flexible, efficient, and reliable spectrum use.
4	Office of Engineering and Technology	*Title:* Petition for Waiver of the Part 15 UWB Regulations Filed by the Multi-band OFDM Alliance Special Interest Group (ET Docket No. 04–352). *Summary:* The Commission will consider an Order concerning UWB Transmitters that operate under Part 15 rules.
5	Wireline Competition	*Title:* The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92–105). *Summary:* The Commission will consider an Order designating 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002.

* * * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	Enforcement	*Title:* Enforcement of Sections 201 and 258 of the Act. *Summary:* The Commission will consider action concerning an investigation into compliance with the Commission's slamming rules.
2	Enforcement	*Title:* C&W Communications, Inc., Licensee of Private Land Mobile Stations WNJB566 and KNBV420; Steve Gill, Licensee of Private Land Mobile Station WNEC236; Radio Service Company, Licensee of Private Land Mobile Stations WPBB209, WNXZ684, and WNXZ686; and Fresno Mobile Radio, Inc., Licensee of Private Land Mobile Stations WYY797, WYY798, WYY799, KNDC491, and WNA511. *Summary:* The Commission will consider an action concerning an Application for Review filed by Nextel Communications, Inc. and Nextel Partners, Inc. of an Enforcement Bureau decision denying Nextel's requests for the commencement of license revocation proceedings against Private Land Mobile licensees C&W Communications, Inc. and its owner, Steve Gill, Radio Service Company, and Fresno Mobile Radio, Inc.
3	International	*Title:* 2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations (IB Docket No. 00–248) and Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellite at Application Procedures for Satellite Communication Services (CC Docket No. 86–496). *Summary:* The Commission will consider a Fifth Report and Order in IB Docket No. 00–248, and Third Report and Order in CC Docket No. 86–496 concerning streamlining the procedures for reviewing non-routine earth station applications.
4	International	*Title:* 2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations (IB Docket No. 00–248). *Summary:* The Commission will consider a Sixth Report, Order, and Third Further Notice of Proposed Rulemaking concerning revisions to its earth station antenna gain pattern requirements, and the establishment of an off-axis EIRP envelope for Earth Stations in the Fixed Satellite Service.

5	Media	*Title:* Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Alva, Mooreland, Tishomingo, Tuttle and Woodward, Oklahoma) (MM Docket No. 98–155, RM–9082, and RM–9133). *Summary:* The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Ralph Tyler seeking review of a decision by the Mass Media Bureau denying a request to reallot Channel 259C3 to Tuttle, Oklahoma.
6	Media	*Title:* Birach Broadcasting Corporation, Request to Toll the Period to Construct Unbuilt Station WIJR(AM) Palm Beach Gardens, Florida. *Summary:* The Commission will consider an Order on Reconsideration concerning an Application for Review filed by Birach Broadcasting Corp. seeking review of a decision by the Commission to affirm a denial of Birach's request for additional time to construct unbuilt station WIJR(AM).
7	Media	*Title:* KEGG Communications, Inc., Licensee of Station K216EQ, Daingerfield, Texas, and Application for Construction Permit for a New Noncommercial Educational FM Station in Daingerfield, Texas. *Summary:* The Commission will consider action concerning an application filed by KEGG Communications, Inc. for a construction permit for a new noncommercial educational FM station in Daingerfield, Texas, and materials relating to KEGG Communications' operation of NCE translator station K216EQ, Daingerfield, Texas.
8	Media	*Title:* DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, Commercial Television Stations with May 1, 2002 Deadline. *Summary:* The Commission will consider an Order concerning applications filed by commercial television stations seeking extensions of the May 1, 2002 deadline for construction of their digital television facilities.
9	Media	*Title:* DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, Noncommercial Educational Television Stations with May 1, 2003 Deadline. *Summary:* The Commission will consider an Order concerning applications filed by Noncommercial television stations seeking extensions of the May 1, 2003 deadline for construction of their digital television facilities.
10	Office of Engineering Technology	*Title:* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Narrowband Private and Land Mobile Radio Channels in the 150.05–150.8 MHz, 162–174 MHz, and 406.1–420 MHz Bands that are Allocated for Federal Government Use (ET Docket No. 04–243). *Summary:* The Commission will consider a Report and Order concerning the procedures by which 40 Private Land Mobile Radio channels, which are located in frequency bands that are primarily allocated for Federal use, are to transition to narrower, more efficient channels in a process commonly known as "narrowbanding."
11	Office of Engineering and Technology	*Title:* Amendment of Parts 2, 25, and 73 of the Commission's Rules to Implement Decisions from the World Radiocommunication Conference (Geneva 2003) (WRC–03) Concerning Frequency Bands Between 5900 kHz and 27.5 GHz and to Otherwise Update the Rules in this Frequency Range (ET Docket No. 04–139). *Summary:* The Commission will consider a Report and Order concerning the use of Frequency Band Between 5900 kHz and 27.5 GHz Band.
12	Wireline Competition	*Title:* Request to Update Default Compensation Rate for Dial-Around Calls from Payphones (WC Docket No. 03–225). *Summary:* The Commission will consider a Further Notice of Proposed Rulemaking that solicits data to enable the Commission to determine a current and accurate monthly average of compensable dial-around calls per-payphone for the purpose of establishing a monthly per-payphone default rate.
13	Wireline Competition	*Title:* Application for Review of a Decision of the Wireline Competition Bureau, Mescalero Apache School, Mescalero, New Mexico; and Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6). *Summary:* The Commission will consider an Order regarding an Application for Review of a decision issued by the Telecommunications Access Policy Division of the Wireline Competition Bureau.
14	Wireline Competition	*Title:* 1993 Annual Access Tariff Filings, GSF Order Compliance Filings (CC Docket No. 93–193); 1994 Annual Access Tariff Filings, 1995 Annual Access Tariff Filings, and 1996 Annual Access Tariff Filings (CC Docket No. 94–65). *Summary:* The Commission will consider an Order on Review of a Common Carrier Bureau Order clarifying methods to be used by local exchange carriers to allocate refund and sharing amounts among price cap baskets.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Request other reasonable accommodations for people with disabilities as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4722 Filed 3–7–05; 12:43 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2005–7]

Price Index Increases for Expenditure and Contribution Limitations

AGENCY: Federal Election Commission.

ACTION: Corrected notice of expenditure and contribution limitation increases.

SUMMARY: As mandated by provisions of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), the Federal Election Commission (''FEC'' or ''the Commission'') is adjusting certain expenditure and contribution limitations set forth in the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''the Act''), to account for increases in the consumer price index. This notice corrects certain information regarding the effective periods for changes to contribution limits under FECA that was published in the Commission's notice appearing in the February 10, 2005, **Federal Register**.

Additional details appear in the supplemental information that follows.

DATES: *Effective Date:* The effective date for the limits at 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B) and 441a(h) is November 3, 2004. The effective date for the limits at 2 U.S.C. 441a(a)(3) and 441a(d) is January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; telephone: (202) 694–1100; toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), coordinated party expenditure limits (2 U.S.C. 441a(d)(3)(A) and (B)), and certain contribution limits (2 U.S.C. 441a(a)(1)(A) and (B), (a)(3), (d) and (h)), are adjusted either annually or biennially by the consumer price index. *See* 2 U.S.C. 441a(c)(1). The Commission is publishing this notice to announce these limits for 2005 or the 2005–2006 election cycle.

Coordinated Party Expenditure Limits for 2005

Under 2 U.S.C. 441a(c), the Commission must adjust the expenditure limitations established by 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974).

1. Expenditure Limitation for House of Representatives

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives. The formula used to calculate the expenditure limitation in a state with more than one congressional district multiplies the base figure of $10,000 by the price index (3.831), rounding to the nearest $100. Based upon this formula, the expenditure limitation for 2005 House elections in those states is $38,300. The formula used to calculate the expenditure limitation in a state with only one congressional district multiplies the base figure of $20,000 by the price index (3.831), rounding to the nearest $100. Based upon this formula, the expenditure limitation for 2005 House elections in these states is $76,600.

2. Expenditure Limitation for Senate

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate. The formula used to calculate the Senate expenditure limitation considers not only the price index but also the voting age population (''VAP'') of the state. The expenditure limitation is the greater of: the base figure ($20,000) multiplied by the price index (which totals $76,600); or $0.02 multiplied by the VAP of the state, multiplied by the price index. Amounts are rounded to the nearest $100. The chart below provides the state-by-state breakdown of the 2005 expenditure limitations for Senate elections.

SENATE EXPENDITURE LIMITATIONS—2005 ELECTIONS

State	VAP (in thousands)	VAP x .02 multiplied by the price index (3.831)	Expenditure limit (the greater of the amount in column 3 or $76,600)
Alabama	3,436	$263,300	$263,300
Alaska	467	35,800	76,600
Arizona	4,197	321,600	321,600

SENATE EXPENDITURE LIMITATIONS—2005 ELECTIONS—Continued

State	VAP (in thousands)	VAP x .02 multiplied by the price index (3.831)	Expenditure limit (the greater of the amount in column 3 or $76,600)
Arkansas	2,076	159,100	159,100
California	26,297	2,014,900	2,014,900
Colorado	3,423	262,300	262,300
Connecticut	2,665	204,200	204,200
Delaware	637	48,800	76,600
Florida	13,394	1,026,300	1,026,300
Georgia	6,497	497,800	497,800
Hawaii	964	73,900	76,600
Idaho	1021	78,200	78,200
Illinois	9,475	726,000	726,000
Indiana	4,637	355,300	355,300
Iowa	2,274	174,200	174,200
Kansas	2,052	157,200	157,200
Kentucky	3,166	242,600	242,600
Louisiana	3,351	256,800	256,800
Maine	1,035	79,300	79,300
Maryland	4,163	319,000	319,000
Massachusetts	4,952	379,400	379,400
Michigan	7,579	580,700	580,700
Minnesota	3,861	295,800	295,800
Mississippi	2,153	165,000	165,000
Missouri	4,370	334,800	334,800
Montana	719	55,100	76,600
Nebraska	1,313	100,600	100,600
Nevada	1,731	132,600	132,600
New Hampshire	995	76,200	76,600
New Jersey	6,543	501,300	501,300
New Mexico	1,411	108,100	108,100
New York	14,655	1,122,900	1,122,900
North Carolina	6,423	492,100	492,100
North Dakota	495	37,900	76,600
Ohio	8,680	665,100	665,100
Oklahoma	2,664	204,100	204,100
Oregon	2,742	210,100	210,100
Pennsylvania	9,569	733,200	733,200
Rhode Island	837	64,100	76,600
South Carolina	3,173	243,100	243,100
South Dakota	580	44,400	76,600
Tennessee	4,510	345,600	345,600
Texas	16,223	1,243,000	1,243,000
Utah	1,649	126,300	126,300
Vermont	487	37,300	76,600
Virginia	5,655	433,300	433,300
Washington	4,718	361,500	361,500
West Virginia	1,431	109,600	109,600
Wisconsin	4,201	321,900	321,900
Wyoming	390	29,900	76,600

Contribution Limitation Increases for Individuals, Nonmulticandidate Committees and for Certain Political Party Committees Giving to U.S. Senate Candidates for 2005–2006 Election Cycle

BCRA amended the Act to extend inflation indexing to: (1) The limitations on contributions made by persons under 2 U.S.C. 441a(a)(1)(A) (contributions to candidates) and 441a(a)(1)(B) (contributions to national party committees); (2) the biennial aggregate contribution limits applicable to individuals under 2 U.S.C. 441a(a)(3); and (3) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c). These contribution limitations are increased by multiplying the respective statutory contribution amount by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2001). The resulting amount is rounded to the nearest multiple of $100. The Commission has calculated the applicable percent difference to be 6.7 percent.

Contribution limitations shall be adjusted accordingly:

Statutory provision	Statutory amount	2005–2006 Limitation
2 U.S.C. 441a(a)(1)(A)	$2,000	$2,100.

Statutory provision	Statutory amount	2005–2006 Limitation
2 U.S.C. 441a(a)(1)(B)	$25,000	$26,700.
2 U.S.C. 441a(a)(3)(A)	$37,500	$40,000.
2 U.S.C. 441a(a)(3)(B)	$57,500 (of which not more than $37,500 may be attributable to contributions to political committees that are not political committees of national political parties).	$61,400 (of which not more than $40,000 may be attributable to contributions to political committees that are not political committees of national political parties).
2 U.S.C. 441a(h)	$35,000	$37,300.

The increased limitation at 2 U.S.C. 441a(a)(1)(A) is to be in effect for the 2-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled election. Thus the respective figure above is in effect from November 3, 2004, to November 7, 2006. The limitations under 2 U.S.C. 441a(a)(1)(B), 441a(a)(3)(A) and (B), and 441a(h), shall be in effect beginning January 1st of the odd-numbered year and ending on December 31st of the next even-numbered year. Thus the new contribution limits under 2 U.S.C. 441a(a)(1)(B), 441a(a)(3)(A) and (B), and 441a(h) are in effect from January 1, 2005, to December 31, 2006.

Dated: March 4, 2005.

Michael E. Toner,

Vice Chairman, Federal Election Commission.

[FR Doc. 05–4580 Filed 3–8–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via email at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the FEDERAL REGISTER.

Agreement No.: 011867–002.

Title: Norasia/GSL Round the World Service Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; Gold Star Line Ltd.; and Norasia Container Lines Limited. Ltd.

Filing Party: Brett M. Esber, Esq.; Blank Rome LLP; Watergate 600 New Hampshire Ave., NW.; Washington, DC 20037.

Synopsis: The amendment adds China Shipping Container Lines (Hong Kong) Co., Ltd. as a party to the agreement and expands the geographic scope to all of the United Arab Emirates.

Agreement No.: 011906.

Title: HSDG/Evergreen Space Charter Agreement.

Parties: Hamburg Sud and Evergreen Marine Corp.(Taiwan) Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Washington, DC 20036.

Synopsis: The proposed agreement permits Hamburg Sud to charter space to Evergreen in the trade between U.S. East Coast ports and ports on the East Coast of South America.

Agreement No.: 201143–005.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific; California United Terminals, Inc.; Eagle Marine Services, Ltd.; Husky Terminals, Inc.; International Transportation Service, Inc,; Long Beach Container Terminal, Inc.; Marine Terminals Corp.; Seaside Transportation Service LLC; Trans Bay Container Terminal, Inc.; Trans Pacific Container Service Corporation; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; and SSA Terminal (Long Beach), LLC.

Synopsis: The amendment clarifies the authority of the parties, makes a number of membership changes, clarifies matters relating membership revocations, revises the arbitration provision, provides for electronic voting, and makes a number of technical corrections in the agreement.

Agreement No.: 201164.

Title: Marine Terminal Lease and Operating Agreement Between Broward County and H.T. Shipping, Inc.

Parties: Broward County and H.T. Shipping, Inc., with Tropical Shipping and Construction Company Limited and Hybur, Ltd. as co-guarantors.

Filing Party: Candace J. McCann; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the lease of terminal facilities at Port Everglades, Florida.

By Order of the Federal Maritime Commission.

Dated: March 4, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–4632 Filed 3–8–05; 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 Part 515.

License No.	Name/address	Date reissued
002238F	CSI Cargo System Air and Sea Inc., 150–40 183rd Street, Room 106, Jamaica, NY 11413	January 8, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–4630 Filed 3–8–05; 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: 011868N.

Name: Seagate Container Line, Inc.

Address: 911 Western Avenue, Suite 304, Seattle, WA 98104.

Date Revoked: February 8, 2005.

Reason: Failed to maintain a valid bond.

License Number: 016528F.

Name: Uni International, America Corp.

Address: 880 Mondalay Avenue, #C 1211, Clearwater, FL 33767.

Date Revoked: February 5, 2005.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–4631 Filed 3–8–05; 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 and Ocean Freight Forwarder Transportation Intermediary Applicant:

Transatlantic Shipping, Inc., 1005 W. Arbor Vitae Street, Inglewood, CA 90301. Officers: Abdul Rezak Morgan Farah, President, (Qualifying Individual), Omer M. Hussen, Operations Manager.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Logistics Northwest, LLC, 4370 NE., Halsey Street, Suite #228, Portland, OR 97213. Officer: Lori Nold, President, (Qualifying Individual).

Dated: March 4, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–4629 Filed 3–8–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Capital City Bank Group, Inc., Tallahassee, Florida; to merge with First Alachua Banking Corporation, and thereby indirectly acquire First National Bank of Alachua, Alachua, Florida.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Community First Bancshares, Inc., Harrison, Arkansas; to acquire 20 percent of the voting shares of White River Bancshares Company, Fayetteville, Arkansas, and thereby indirectly acquire Signature Bank of Arkansas, Fayetteville, Arkansas (formerly First Bank of South Arkansas, Camden, Arkansas).

2. Home Bancshares, Inc., Conway, Arkansas; to acquire 20 percent of the voting shares of White River Bancshares Company, Fayetteville, Arkansas, and thereby indirectly acquire Signature Bank of Arkansas, Fayetteville, Arkansas (formerly First Bank of South Arkansas, Camden, Arkansas).

3. White River Bancshares Company, Fayetteville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Signature Bank of Arkansas, Fayetteville, Arkansas (formerly First Bank of South Arkansas, Camden, Arkansas).

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOTS, Inc., Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of VisionBank, Topeka, Kansas (in organization).

2. Young Partners, L.P., and Young Corporation, both of Chillicothe, Missouri, to indirectly acquire, and Citizens Bancshares Co., Chillicothe, Missouri, to directly acquire an additional 11.6 percent, for a total of 23.3 percent of the voting shares of First Community Bancshares, Inc., Overland Park, Kansas, and thereby indirectly acquire First Community Bank, Lee's Summit, Missouri.

3. Young Partners, L.P., and Young Corporation, both of Chillicothe, Missouri, to indirectly acquire, and Citizens Bancshares Co., Chillicothe, Missouri, to directly acquire an additional 2 percent, for a total of 6.95 percent of the voting shares of Clayco Banc Corporation, and thereby indirectly acquire voting shares of CSB Bank, both in Claycomo, Missouri.

D. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group)

101 Market Street, San Francisco, California 94105-1579:

1. FNB Bancorp, South San Francisco, California; to acquire 100 percent of the voting shares of Sequoia National Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, March 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4544 Filed 3–8–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through June 30, 2008, the current Paperwork Reduction Act clearances for information collection requirements contained in three Commission Rules. Those clearances expire on June 30, 2005.

DATES: Comments must be submitted on or before May 9, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Paperwork Comment: FTC File No. P822108'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex X), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Alternatively, comments may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *PaperworkComment@ftc.gov.* If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Industry Practices Rule (''Funeral Rule'') should be addressed to Catherine Harrington-McBride, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2452. Requests for additional information or copies of the proposed information requirements for the Children's Online Privacy Protection Act Rule (''COPPA Rule'') should be addressed to Rona Kelner, (202) 326–2752, or Karen Muoio, (202) 326–2491, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Mail Drop NJ–3212, Washington, DC 20580. Requests for additional information or copies of the proposed information requirements for the Gramm-Leach-Bliley Act Privacy Rule (''GLBA Rule'') should be addressed to Laura Berger, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Room S–4429, 601 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Funeral Rule, 16 CFR part 453 (OMB Control Number 3084–0025); the COPPA Rule, 16 CFR part 312 (OMB Control Number 3084–0117); and the GLBA Rule, 16 CFR part 313 (OMB Control Number 3084–0121).

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

1. The Funeral Rule, 16 CFR Part 453 (OMB Control Number 3084–0025)

The Funeral Rule ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule. The PRA clearance for the Funeral Rule was scheduled to expire on March 31, 2005. On February 7, 2005, the OMB granted the FTC's request for a short-term extension to June 30, 2005, to allow for this opportunity for public comment.

The estimated burden associated with the collection of information required by the Rule is 21,500 hours for recordkeeping, 104,545 hours for disclosures, and 43,000 hours for training, for a total of 169,000 hours (rounded to the nearest thousand). This estimate is based on the number of funeral providers (approximately 21,500),[2] the number of funerals

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The estimated number of funeral providers is from data provided on the National Funeral Directors Association (''NFDA'') Web site (*http://*

annually (approximately 2.4 million),[3] and the time needed to fulfill the information collection tasks required by the Rule. The methodology followed in deriving burden estimates for the existing clearance is detailed in an April 11, 2002, **Federal Register** Notice that responded to a comment by the National Funeral Directors Association (''NFDA'') regarding the FTC's 2001 request for an extension of the clearance. *See* 67 FR 17691.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 21,500 providers is 21,500 hours. This estimate is lower than FTC staff's 2002 estimate of 22,300 hours due to a decrease in the number of funeral providers.

Disclosure: The Rule requires that funeral providers: (1) Maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining current price lists requires that funeral providers revise their price lists from time to time throughout the year to reflect price changes. Staff estimates, consistent with its current clearance, that this task requires a maximum average burden of two and one-half hours per provider per year for this task. Thus, the total burden for 21,500 providers is 53,750 hours.

2. Staff retains its 2002 estimate that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers specifically due to the Rule's mandate. The original rulemaking record indicated that 87% of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[4] The NFDA's 2002 comment indicates that even before the Rule became effective, nearly every funeral home already had been providing consumers with some kind of final statement in writing. NFDA stated that likely only the timing of the statement's issuance had changed as a result of the Rule. Nonetheless, staff believes it prudent to err, if at all, on the side of overestimating the burden imposed by the Rule.

According to the rulemaking record, these providers are typically the smallest funeral homes. The written documentation requirement can be satisfied through the use of a standard form (an example of which the FTC has provided to all funeral providers in its compliance guide).[5] Based on an estimate that these smaller funeral homes arrange, on average, approximately twenty funerals per year and that it would take each of them about three minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with the written documentation requirement is one hour per provider not already in compliance, for a total of 2,795 hours [(21,500 funeral providers × 13%) × (20 statements per year × 3 minutes per statement)].

3. The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about 12% of funeral purchasers make telephone inquiries, with each call lasting an estimated ten minutes. Thus, assuming that the average purchaser who makes telephone inquiries places one call per funeral to determine prices, the estimated burden is 48,000 hours (2.4 million funerals per year × 12% × 10 minutes per inquiry), a slight increase over the 46,000 hours estimated by staff in 2002 due to the increase in the number of funerals per year. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the burden due to the Rule's disclosure requirements totals 104,545 hours (53,750 + 2,795 + 48,000).

Training: In addition to the recordkeeping and disclosure-related tasks noted above, funeral homes may also have training requirements specifically attributable to the Rule. While staff believes that annual training burdens associated with the Rule should be minimal because Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs, staff estimates that, industry-wide, funeral homes should incur no more than 43,000 hours related to training specific to the Rule each year. This estimate is consistent with staff's assumption for the current clearance that an ''average'' funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule. Staff retains its estimate that each of the four employees (three directors and a clerical employee) per firm would each require one-half hour, at most, per year, for such training. Thus, total estimated time for training is 43,000 hours (4 employees per firm × ½ hour × 21,500 providers).

Estimated annual cost burden: $4,882,000, rounded to the nearest thousand ($3,654,000 in labor costs and $1,228,000 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an hourly rate of $13, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 21,500 hours, the estimated cost burden for recordkeeping is $279,500 ($13 per hour × 21,500 hours).

The two and one-half hours required of each provider, on average, to update price lists should consist of approximately one and one-half hours of managerial or professional time, at $27.50 per hour, and one hour of clerical time, at $13 per hour, for a total of $54.25 per provider[6] [($27.50 per hour × 1.5 hours) + ($13.00 per hour × 1 hour)]. Thus, the estimated total cost burden for maintaining price lists is $1,166,375 ($54.25 per provider × 21,500 providers).

The cost of providing written documentation of the goods and services selected by the consumer is 2,795 hours of managerial or professional time at approximately $27.50 per hour, or $76,862.50 (2,795 hours × $27.50 per hour).

www.nfda.org), which was accessed in January 2005.

[3] The estimated number of funerals annually is taken from the National Center for Health Statistics, *http://www.cdc.gov/nchs/*. According to NCHS, 2,443,387 deaths occurred in the United States in 2002, the most recent year for which final data is available. *See* National Vital Statistics Reports, vol. 53, no. 5 ''Deaths: Final Data for 2002,'' available at *http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_05acc.pdf.*

[4] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

[5] The FTC has provided its compliance guide to all funeral providers at no cost, and additional copies are available on the FTC Web site, *http://www.ftc.gov*, or by mail.

[6] National Compensation Survey: Occupational Wages in the United States, July 2003, U.S. Department of Labor, Bureau of Labor Statistics (Aug. 2004) (''BLS National Compensation Survey'') (citing the mean hourly earnings for funeral directors as $21.30/hour), available at *http://www.bls.gov/ncs/ocs/sp/ncbl0636.pdf.* As in the past, staff has increased this figure on the assumption that the owner or managing director, who would be paid at a slightly higher rate, would be responsible for making pricing decisions.

The cost of responding to telephone inquiries about offerings or prices is 48,000 hours of managerial or professional time at $27.50 per hour, or $1,320,000 (48,000 hours × $27.50 per hour).

The cost of training licensed and non-licensed funeral home staff to comply with the Funeral Rule is two hours per funeral home, with four employees of varying ranks each spending one-half hour on training. Consistent with estimates in the current clearance, the Commission is assuming that three funeral directors, at hourly wages of $27.50, $20, and $15, respectively, as well as one clerical or administrative staff member, at $13 per hour, require such training, for a total burden of 43,000 hours (21,500 funeral homes × 2 hours total per establishment), and $811,625 [($27.50 + $20 + $15 + $13) × ½ hour per employee × 21,500 funeral homes].

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $2,563,237.50 ($1,166,375 + $76,862.50 + $1,320,000). The total labor cost for recordkeeping is $279,500. The total labor cost for disclosures, recordkeeping and training is $3,654,000 ($279,500 for recordkeeping + $811,625 for training + $2,563,237.50 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Assuming that two price lists per funeral/cremation are created by industry to adhere to the Rule, 4,800,000 copies per year are made for a total cost of $1,200,000 (2,400,000 funerals per year × 2 copies per funeral × $.25 per copy). In addition, the estimated 2,795 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at twenty-five cents per page, at an average of twenty funerals per year, the added cost burden would be $27,950 (2,795 providers × 20 funerals per year × 2 pages per funeral × $.25). Thus, estimated non-labor costs are $1,228,000, rounded to the nearest thousand.

2. The COPPA Rule, 16 CFR Part 312 (OMB Control Number 3084–0117)

The COPPA Rule prohibits unfair and deceptive acts and practices in connection with the collection and use of personally identifiable information from and about children on the Internet.

Estimated annual hours burden: 2000 hours (rounded to the nearest thousand).

Disclosure Requirements: 1800 hours.

The COPPA Rule contains certain statutorily-required notice requirements, which constitute a ''collection of information'' under the PRA:

(a) the Rule requires each Web site and online service operator directed to children, and any Web site or online service operator with actual knowledge that it is collecting personal information from children, to provide notice of how it collects, uses, and discloses such information and, with exceptions, to obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure;

(b) the Rule requires the operator to provide the parent with notice of the specific types of personal information being collected from the child, to give the parent the opportunity to forbid the operator at any time from further collecting, using, or maintaining such information, and to provide reasonable means for the parent to obtain the information;

(c) The Rule prohibits a child's participation in a game, a prize offer, or other activity from being conditioned on the child's disclosure of more personal information than is ''reasonably necessary'' for the child to participate in that activity; and

(d) The Rule requires Web site and online service operators to establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

After consulting with the COPPA safe harbor programs and industry groups, the FTC staff retains its earlier estimate that roughly thirty new Web entrants each year will fall within the Rule's coverage. Web site operators that have previously created or adjusted their sites to comply with the Rule will incur no further burden associated with the Rule, unless they opt to change their policies and information collection in ways that will further invoke the Rule's provisions. Moreover, the staff believes that existing COPPA-compliant operators who introduce additional sites beyond those they already have created will incur minimal, if any, incremental PRA burden. This is because such operators already have been through the start-up phase and can carry over the results of that to the new sites they create.

Staff also retains its prior estimate that on average, new entrants will spend approximately sixty hours crafting a privacy policy, designing a mechanism to provide the required notice, and posting it online. Accordingly, the staff estimates that complying with the Rule's disclosure requirements will require approximately 1,800 hours (30 new Web entrants x 60 hours per entrant). Consistent with prior estimates, FTC staff estimates that the time spent on compliance would be apportioned five to one between legal (lawyers or similar professionals) and technical (computer programmers) personnel. The staff therefore estimates that lawyers or similar professionals who craft privacy policies will account for 1,500 of the 1,800 hours required. Computer programmers responsible for posting the policy will account for the remaining 300 hours.

Voluntary Reporting Requirements for Safe Harbor Participants: 130 hours.

Operators can comply with the Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.[7] While the submission of industry self-regulatory guidelines to the agency is voluntary, the Rule includes specific reporting requirements that all safe harbor applicants must provide to receive Commission approval.

FTC staff retains its estimate that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.12(c) of the Rule. Industry sources have confirmed recently that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Based on past experience and industry input, the staff believes that no more than one applicant every two years will submit a request. Thus, the burden attributable to this requirement would be approximately 130 hours per year (265 hours/2 years).

The staff believes that most of the records submitted in connection with a safe harbor request would be records that marketing and online industry representatives have kept in the

[7] *See* Section 312.10(c). Approved self-regulatory guidelines can be found on the FTC's Web site at *http://www.ftc.gov/privacy/safeharbor/shp.htm.*

ordinary course of business before the Rule was issued. Any incremental effort associated with maintaining the results of independent assessments under Section 312.10(d)(3) would also be in the normal course of business. Thus, in accordance with the regulations implementing the PRA, the burden estimate does not include effort expended for these activities. 5 CFR 1320.3(b)(2).

Accordingly, the staff estimates that total hours per year for the disclosure requirements affecting new Web entrants and the reporting requirements for safe harbor applications would be approximately 2000 hours (rounded to the nearest thousand).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The staff conservatively assumes hourly rates of $85 and $30, respectively, for lawyers or similar professionals and computer programmers.[8] Based on these inputs, the staff further estimates that the associated annual labor costs for new entrants would be $136,500 [(1,500 hours × $85 per hour for legal) + (300 hours × $30 per hour for computer programmers)] and for safe harbor applicants would be $11,050 (130 hours per year × $85 per hour), for a total labor cost of $148,000 (rounded to the nearest thousand).

Non-labor costs: Because Web sites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the sole costs incurred by the Web sites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be maintained under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule.

3. The GLBA Rule, 16 CFR Part 313 (OMB Control Number 3084–1021)

The GLBA Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the GLBA, 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping.

Estimated annual hours burden: As noted in the original burden estimate for the GLBA Rule, determining the paperwork burden of the Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a Federal financial regulatory agency. *See* 15 U.S.C. 6805 (committing to the Commission's jurisdiction entities that are not specifically subject to another agency's jurisdiction).

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the GLBA Rule. In addition, some entities may use highly automated means to provide the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time that may be necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Staff retains its prior estimate of the number of entities each year that will address the GLBA Rule for the first time (5,000) and its estimate of established entities already familiar with the Rule (100,000). While the number of established entities familiar with the Rule would theoretically increase each year with the addition of new entrants, staff retain its previous estimate of established entities in consideration of the fact that a number of the established entities will close in any given year, and the difficulty of establishing a more precise estimate. Staff's burden estimates for new entrants and established entities are detailed in the charts below.

Start-up hours and labor costs for new entities:

Event	Hourly wage and labor category	Hours per respondent	Labor cost per event* (per respondent) (dollars)	Approx. number of respondents	Approx. total annual hrs.	Approx. total labor costs (dollars)
Reviewing internal policies and developing GLBA-implementing instructions**.	$35.92 managerial/professional.	20	$718.40	5,000	100,000	$3,592,000
Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	$13.77 clerical	5	68.85	5,000	25,000	344,250
	$28.37 professional/technical.	10	283.70	5,000	50,000	1,418,500
Disseminating initial disclosure (including opt out notices).	$13.77 clerical	15	206.55	5,000	75,000	1,032,750
	$28.37 professional/technical.	10	283.70	5,000	50,000	1,418,500
Total					300,000	7,806,000

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for managerial/professional time (*e.g.*, compliance evaluation and/or planning), professional/technical time (*e.g.*, designing and producing notices, reviewing and updating information systems), and clerical time (*e.g.*, reproduction tasks, filing, and, where applicable to the given event, typing or mailing). *See* BLS National Compensation Survey, Table 3, available at *http://www.bls.gov/ncs/ocs/sp/ncbl0635.pdf.* Labor cost totals reflect solely that of the commercial entities affected. Staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

[8] FTC staff estimates average legal costs at $85 hour, which is consistent with Commission experience with other information collection activities. The $30 estimate for computer programmers is based on the BLS National Compensation Survey, which indicates the mean hourly wage rate for computer programmers as $29.53.

** Reviewing instructions includes all efforts performed by or for the respondent to: determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of document and/or electronic disclosures).

Burden hours and costs for established entities:

Burden for established entities already familiar with the Rule predictably would be less than for start-up entities because start-up costs, such as crafting a privacy policy, are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

Event	Hourly wage and labor category	Hours per respondent*	Approx. number of respondents**	Approx. total annual hours	Approx. total labor costs (dollars)
Reviewing GLBA-implementing policies and practices	$35.72 managerial/professional	4	70,000	280,000	$10,001,600
Disseminating annual disclosure	$13.77 clerical	15	70,000	1,050,000	14,458,500
	$28.37 professional/technical	5	70,000	350,000	9,929,500
Changes to privacy policies and related disclosures	$13.77 clerical	15	1,000	15,000	206,550
	$28.37 professional/technical	5	1,000	5,000	141,850
Total				1,700,000	34,738,000

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly wage rates used were based on mean wages for managerial/professional time (*e.g.*, compliance evaluation and/or planning), skilled professional/technical time (*e.g.*, designing and producing notices, reviewing and updating information systems), and clerical time (*e.g.*, reproduction tasks, filing, and, where applicable to the given event, typing or mailing). (Bureau of Labor Statistics, Table 3, July 2003; *http://www.bls.gov/ncs/ocs/sp/ncbl0635.pdf).* Consumers have a continuing right to opt-out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt-out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** The estimate of respondents is based on the following assumptions: (1) 100,000 respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (3) such changes will occur no more often than once per year.

As calculated above, the total annual PRA burden for all affected entities in a given year would be 2,000,000 hours and $42,544,000.

Estimated Capital/Other Non-Labor Costs Burden: Staff estimates that the capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (*e.g.,* computers with word processing programs, typewriters, copying machines, mailing capabilities). Most likely, only entities that already have on-line capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

Christian S. White,

Acting General Counsel.

[FR Doc. 05–4590 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/08/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050559	Mellon Financial Corporation	DPM Holdings, LLC	Derivatives Portfolio Management, LLC
20050563	Verizon Communications Inc.	St. Cloud Wireless Holdings, LLC	Cellular Mobile Systems of St. Cloud, LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 02/09/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050533	Electro-Motive Diesel, Inc.	General Motors Corporation	Electro-Motive Division Canada Acquisition Company
			Electro-Motive Division Locomotive Technologies Private Ltd.
			Electro-Motive International Corporation
			Electro-Motive Maintenance Operations Pty. Ltd.
			General Motors Overseas Corporation
20050541	Halifax Capital Partners, L.P.	Rinker Group Limited	Pipe Liners, Inc.
			Rinker Materials Polypipe, Inc.
20050542	Lindsay Goldberg & Bessemer L.P.	WestLB AG	Klockner & Co. Aktiengesellschaft

TRANSACTIONS GRANTED EARLY TERMINATION - 02/11/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050018	Cemex, S.A. de C.V.	RMC Group p.l.c.	RMC Group p.l.c.
20050339	L-3 Communications Holdings, Inc.	The Boeing Company	Boeing Electron Dynamic Devices, Inc.
20050362	Humana Inc.	Miguel B. Fernandez	CPHP Holdings, Inc.
20050516	Value Creation Partners, Inc.	The J. M. Smucker Company	Gourmet Baker, Inc.
			International Multifoods Corporation
20050530	Invitrogen Corporation	Dean Tsao	Zymed Laboratories, Inc.
20050561	McDATA Corporation	Computer Network Technology Corporation	Computer Network Technology Corporation
20050571	Almendral S. A.	Telecom Italia S.p.A.	Empresa Nacional de Telecomunicaciones S.A.
20050572	Eastman Kodak Company	Dainippon Ink and Chemicals, Incorporated	Kodak Polychrome Graphics LLC
20050574	Nutreco Holding N.V.	Marine Harvest N.V.	Marine Harvest N.V.
20050576	Vestar-AIV Holdings A L.P.	Mr. Ferruccio Fiorucci	Casare Fiorucci S.p.A.
20050578	Lillian Trust	EPI Corporation	EPI Healthcare, LLC
			EPI Investments, LLC
			Kentucky Healthcare Training Institute, Inc.

			Rehab of El Paso, LLC
			Rehab of El Paso, Ltd.
20050580	Max Media LLC	Chesapeake Bay Broadcasting LLC	Chesapeake Bay Broadcasting LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 02/15/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050548	Sterling Capital Partners, LP	Robert L. Mattocks, II and Carol J. Mattocks	Jenkins Gas and Oil Co., Inc.
20050570	Tinicum Capital Partners II, L.P.	Penn Engineering & Manufacturing Corp.	Penn Engineering & Manufacturing Corp.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/17/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050372	L-3 Communications Holdings, Inc.	General Dynamics Corporation	General Dynamics Land Systems Inc.
20050524	Lincoln Electric Holdings, Inc.	Joseph W. Harris	Autobraze, Inc.
			Harris-Euro Corporation
			J.W. Harris Co., Inc.
20050588	Maple Acquisition LLC	MeadWestvaco Corporation	Escanaba Paper Company
			Mead Delivers Corp.
			Mead Leasing U.K., Inc.
			MeadWestvaco Energy Services LLC
			MeadWestvaco Kentucky, LP
			MeadWestvaco Maryland, Inc.
			MeadWestvaco Oxford Corporation
			MW Custom Papers, LLC
			Rumford Cogeneration, Inc.
			Rumford Falls Power Company
			Upland Resources, Inc.
20050590	Comcast Corporation	Liberate Technologies	Liberate Technologies

TRANSACTIONS GRANTED EARLY TERMINATION - 02/18/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050521	Cisco Systems, Inc.	Airespace, Inc.	Airespace, Inc.
20050564	Carl C. Icahn	Temple-Inland Inc.	Temple-Inland Inc.
20050565	Icahn Partners Master Fund LP	Temple-Inland, Inc.	Temple-Inland, Inc.
20050567	Icahn Partners Master Fund LP	Kerr-McGee Corporation	Kerr-McGee Corporation

20050586	Valeant Pharmaceuticals International	Xcel Pharmaceuticals, Inc.	Xcel Pharmaceuticals, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/22/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050566	Carl C. Icahn, c/o Icahn Associates Corp.	Kerr-McGee Corporation	Kerr-McGee Corporation
20050577	Dominion Resources, Inc.	WPS Resources Corporation	Wisconsin Public Service Corporation
20050579	Dominion Resources, Inc.	Allliant Energy Corporation	Wisconsin Power and Light Company
20050591	CCG Investments BVI, L.P.	MAPICS, Inc.	MAPICS, Inc.
20050596	Synovus Financial Corp.	Visa U.S.A. Inc.	Vital Processing Services L.L.C.
20050597	Equifax Inc.	APPRO Systems, Inc.	APPRO Systems, Inc.
20050599	Microsoft Corporation	Sybari Software, Inc.	Sybari Software, Inc.
20050600	Plains All American Pipeline, L.P.	Koch Industries, Inc.	Koch Hydrocarbon, L.P.
			Koch Pipeline Company, L.P.
20050601	Marian Ilitch	Mandalay Resort Group	Circus Circus Michigan, Inc.
			Detroit Entertainment, L.L.C.
20050602	Time Warner Inc.	ECI Holdings, Inc.	ECI Holdings, Inc.
20050610	John H. Harland Company	Intrieve, Incorporated	Intrieve, Incorporated
20050611	Lee Enterprises, Incorporated	Voting Trust Agreement dated March 18, 1999	Pulitzer, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/23/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050584	Pfizer Inc.	Rigel Pharmaceuticals, Inc.	Rigel Pharmaceuticals, Inc.
20050595	XTO Energy, Inc.	Antero Resources Corporation	Antero Resources Corporation
20050612	Cytyc Corporation	Proxima Therapeutics, Inc.	Proxima Therapeutics, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/25/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050614	Bruckmann, Rosser, Sherrill & Co. II, L.P.	ICV Partners, L.P.	ICV Marshall Holdings, Inc.
			The Marshall Retail Group, LLC

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–4595 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 051 0007]

Cemex S.A. de C.V.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 15, 2005.

ADDRESSES: Comments should refer to ''Cemex, S.A. de C.V., File No. 051 0007,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Randall Long, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2715.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 14, 2005), on the World Wide Web, at ''*http://www.ftc.gov/os/2005/02/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 15, 2005. Comments should refer to ''Cemex, S.A. de C.V., File No. 051 0007,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Cemex, S.A. de C.V. (''Cemex''). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from Cemex's proposed acquisition of RMC, PLC (''RMC''). The Consent Agreement requires Cemex to divest RMC's Tucson, Arizona ready-mix concrete business within six months of the date Cemex signed the Consent Agreement. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets that requires Cemex to preserve the RMC Tucson, Arizona ready-mix concrete business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Implementation Agreement dated September 27, 2004, Cemex agreed to acquire 100 percent of the existing shares of RMC for approximately $5.8 billion (''Proposed Acquisition''). The Commission's complaint alleges that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the Tucson, Arizona market for the manufacture and sale of ready-mix concrete.

II. The Parties

Headquartered in Monterrey, Mexico, Cemex is the third largest cement company in the world, with significant downstream businesses in ready-mix concrete and related products. Cemex's operations in Tucson, Arizona consist of four ready-mix concrete plants, all of which are supplied internally with concrete aggregates.

RMC is a United Kingdom Holding Company headquartered in London, with nine subsidiaries doing business in the United States. RMC is the world's largest supplier of ready-mix concrete and a leading producer of cement and aggregates in Europe. RMC has five

ready-mix concrete plants in the Tucson, Arizona area, all of which are supplied internally with locally-produced aggregates.

III. The Tucson, Arizona Ready-Mix Concrete Market

The relevant product market in which to assess the competitive effects of the Proposed Acquisition is ready-mix concrete. Ready-mix concrete is produced at local plants by combining cement, aggregates, and water in accordance with precise specifications. Once blended, ready-mix concrete is delivered to construction sites as a slurry in trucks with revolving drums. At construction sites, ready-mix concrete is poured and formed into its final shape. Among building products, ready-mix concrete is unique because it is pliable when freshly mixed and strong and permanent when hardened. Due to ready-mix concrete's exceptional characteristics as a building material, ready-mix concrete customers would not switch to other materials, such as steel, wood, or asphalt, in the event of a five to ten percent increase in the price of ready-mix concrete. Indeed, for some applications, such as certain building foundations, concrete's unique structural characteristics make it the only viable construction material.

The relevant geographic market in which to analyze the effects of the Proposed Acquisition is the Tucson, Arizona metropolitan area. The geographic scope of competition in ready-mix concrete is circumscribed by the perishable nature of the product. Once ready-mix concrete is blended at a plant and loaded into a truck, it will solidify if it is not poured in a timely manner (typically less than one hour), rendering it useless. Hence, ready-mix concrete generally is sold within a 10 to 20 mile radius of the plant where it is mixed, although the precise mileage may differ depending on traffic patterns and infrastructure. For instance, traffic congestion within a metropolitan area can significantly lengthen delivery times, whereas a plant located on the periphery of the market may be able to serve a larger area. Due to a low value-to-weight ratio, transportation costs also can effectively limit the distance that ready-mix concrete can be shipped. There are three ready-mix competitors in Tucson, each operating at least four ready-mix concrete plants: Cemex, RMC, and Rinker. Each competitor has spaced plants within 20 miles of its other plants, creating a network capable of supplying the entire area.

The three-firm Tucson, Arizona ready-mix concrete market is highly concentrated. If the Proposed Acquisition is consummated, the Tucson, Arizona ready-mix concrete market will become even more concentrated with only two independent suppliers. As a result, the Proposed Acquisition likely would facilitate coordinated behavior between Cemex and its lone remaining competitor. Coordination is particularly likely where the relevant product is homogenous, as is ready-mix concrete. In a two-firm market, each competitor would have an enhanced ability to monitor the other's conduct, and would know with certainty the source of any discounting. Likewise, the accuracy and effectiveness of any retaliation for deviations from the terms of collusion would greatly improve with only one remaining competitor. As a result, the Proposed Acquisition would increase the likelihood that ready-mix concrete purchasers in Tucson, Arizona would be forced to pay higher prices and would receive diminished service. Absent Commission action, Cemex's acquisition of RMC raises significant antitrust concerns in Tucson, Arizona.

Entry into the Tucson, Arizona ready-mix concrete market on a level sufficient to deter or counteract the likely anticompetitive effects of the Proposed Transaction is not likely to occur in a timely manner. Entry into this market is difficult due to a limited availability of the vital raw materials, *i.e.,* aggregates and cement, necessary to sustain a new ready-mix concrete operation. In Tucson, Arizona, ready-mix concrete operations are closely intertwined with concrete aggregate operations. As a result, concrete aggregates are not currently available on the open market in Tucson on the scale necessary to sustain a new ready-mix concrete competitor. Thus, a new concrete entrant would need to enter the aggregate business itself, or enter the market contemporaneously with a new aggregate entrant. Neither alternative is likely to occur in a timely manner. Viable locations for concrete aggregates in Tucson are scarce, and even if a suitable site were found, an aggregates entrant would then need to undergo an extensive permitting process with Federal, State, and local authorities. Entry into the Tucson, Arizona ready-mix concrete market also is made difficult by the scale required to compete. Entry with a single ready-mix plant would be insufficient, as customers typically require that a supplier have a network of plants. Presently, all three ready-mix companies have a network of at least four plants supplying the entire Tucson metropolitan area. Due to these entry barriers, new entry by a ready-mix concrete company has not occurred in Tucson in over ten years.

IV. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the Tucson, Arizona ready-mix concrete market by requiring Cemex to divest RMC's Tucson, Arizona ready-mix concrete business. Pursuant to the Consent Agreement, Cemex is required to divest the RMC Tucson, Arizona ready-mix concrete business to a buyer, at no minimum price, within six months of the date Cemex signed the Consent Agreement. The acquirer of the RMC Tucson business must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should Cemex fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires Cemex to provide the trustee with access to information related to the RMC Tucson business as necessary to fulfill his or her obligations.

The Order to Hold Separate and Maintain Assets that is included in the Consent Agreement requires that Cemex hold separate and maintain the viability of the RMC Tucson business as a competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Cemex and the RMC Tucson business (except as otherwise provided in the Consent Agreement). The Order to Hold Separate and Maintain Assets is also designed to prevent interim harm to competition in the Tucson, Arizona ready-mix concrete market pending divestiture. Under the Order to Hold Separate and Maintain Assets, the Commission may appoint a Hold Separate Monitor to monitor Cemex's compliance with the Consent Agreement. Pursuant to that Order, the Commission has appointed Stephen J. Roebuck, President, Roebuck Consulting Group, as a Hold Separate Monitor to

oversee the RMC Tucson business prior to its divestiture and to ensure that Cemex complies with its obligations under the Consent Agreement. Mr. Roebuck has more than 25 years of construction materials industry experience at all levels of management. Most recently, Mr. Roebuck served as Vice President of Sales and Marketing with Southdown, Inc.'s Concrete Products Division. He is also a former member of the Board and Executive Committee of the National Concrete Masonry Association; has authored over 20 industry-specific continuing education programs; and has served as a contributing author and editor for the National Ready Mixed Concrete Association's Certified Concrete Sales Professional program.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or proposed Order or to modify the terms of the Consent Agreement or proposed Order in any way.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[FR Doc. 05–4591 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0203]

Cytec Industries Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 30, 2005.

ADDRESSES: Comments should refer to ''Cytec Industries Inc., File No. 041 0203,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Tovsky, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 1, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/03/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 30, 2005. Comments should refer to ''Cytec Industries Inc., File No. 041 0203,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Cytec Industries Inc. (''Cytec''). The Consent Agreement is intended to resolve anticompetitive effects stemming from Cytec's proposed acquisition of the Surface Specialties Business of UCB S.A. (''UCB''). The Consent Agreement includes a proposed Decision and Order (''Order'') that would require Cytec to divest UCB assets relating to the research, development, marketing, sale, and production of amino resins (''UCB Amino Resins Business''). The Consent Agreement also includes an Order to Hold Separate and Maintain Assets, which requires Cytec to preserve the UCB Amino Resins Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Cytec's proposed acquisition of UCB's Surface Specialties

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Business may have substantially lessened competition in the markets for amino resins for: (1) Industrial liquid coatings; and (2) adhesion promotion in rubber. The Commission has reason to believe that Cytec's proposed acquisition of UCB's Surface Specialties Business would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Hold Separate and Maintain Assets.

I. Amino Resins for Industrial Liquid Coatings and Adhesion Promotion in Rubber

According to the Commission's proposed complaint, the relevant product markets in which to analyze the effects of Cytec's proposed acquisition of UCB's Surface Specialties Business are the manufacture and sale of amino resins for: (1) Industrial liquid coatings; and (2) adhesion promotion in rubber. The types of amino resins that Cytec and UCB manufacture are used as cross-linking agents in thermoset surface coatings for a variety of applications, including automotive coatings, coil coatings, can coatings, appliance coatings, and general maintenance coatings. These types of resins are also used, primarily in tires, to promote the adhesion of rubber to materials such as steel or fiber. As the proposed complaint describes, there are no effective substitutes for amino resins in the applications in which they are used. The proposed complaint also alleges that the relevant geographic market in which to assess the impact of the proposed acquisition is no broader than North America and is potentially limited to the United States.

The proposed complaint alleges that the markets for amino resins for industrial liquid coatings and adhesion promotion in rubber are highly concentrated, that Cytec and UCB have been for many years the two major competitors in these markets, and that these companies compete with one another across a wide range of amino resin grades and applications in which customers have qualified their resins for use. As the proposed complaint describes, customers have relied on the competition between these companies to maintain competitive amino resin prices. The proposed complaint alleges that the proposed acquisition of UCB's Surface Specialties division by Cytec would reduce competition by eliminating the direct competition that has existed between these two companies. The proposed complaint further alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects. Other firms would not in the foreseeable future be able to offer the range of grades that Cytec and UCB have developed over the years, nor would they be able to meet the requirements necessary to commercially qualify their resins for use in demanding customer applications.

II. The Consent Agreement

The proposed Order requires that Cytec divest the UCB Amino Resins Business to an acquirer approved by the Commission within one-hundred and eighty (180) days from the date upon which the Commission accepts the proposed Order for public comment. The divested business includes two manufacturing facilities, in Massachusetts and in Germany, where UCB manufactures amino resins, together with UCB's rights to obtain amino resins pursuant to a tolling agreement between UCB and Solutia Canada, Inc. The divested business also includes certain lines of additives that are the only other products that UCB manufactures at the plant in Germany. In connection with the divestiture, Cytec is required to divest to an acquirer the set of assets that comprise UCB's amino resins business. In addition to the manufacturing assets, for example, Cytec is required to divest the patents and other intellectual property that UCB has relied upon in its amino resins business, the sales and marketing materials, including customer information, that UCB has relied upon, and the other books and records of the business. Further, Cytec is required to assign the different contracts relating to the amino resins business, and to secure all consents necessary for the divestiture. Cytec is also required, until the divestiture is completed, to take the steps necessary to maintain the viability of the UCB Amino Resins Business. The acquirer of the divested assets would have the opportunity, without interference from Cytec, to interview and potentially hire key UCB personnel who have been involved in supporting all aspects of the company's amino resins business.

The proposed Order also provides that if Cytec does not complete its divestiture within the specified six-month period, the Commission may appoint a Divestiture Trustee to divest the UCB Amino Resins Business in a manner acceptable to the Commission. The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee Cytec's compliance with the terms of the proposed Order and the divestiture agreements that Cytec enters pursuant to the proposed Order.

The proposed Order to Hold Separate and Maintain Assets that is also included in the Consent Agreement requires that Cytec hold separate and maintain the viability and marketability of UCB's Amino Resins Business as a viable and competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Cytec and the UCB Amino Resins Business (except as otherwise provided in the Order to Hold Separate and Maintain Assets) and measures designed to prevent interim harm to competition in the relevant markets pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring Cytec's compliance with the Order to Hold Separate and Maintain Assets.

The proposed Order requires Cytec to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which Cytec intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Cytec to provide the Commission with a report of compliance with the Order every thirty (30) days after the date when the Order becomes final until the divestiture has been completed.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets, or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–4592 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 032 3239]

Hi-Health Supermart Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 16, 2005.

ADDRESSES: Comments should refer to ''Hi-Health Supermart Corporation, *et al.*, File No. 032 3239,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Heather Hippsley or Matthew Daynard, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3285 or 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 15, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/02/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 16, 2005. Comments should refer to ''Hi-Health Supermart Corporation, *et al.*, File No. 032 3239,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Hi-Health Supermart Corporation and Simon D. Chalpin (collectively, ''Hi-Health'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations about a dietary supplement, Premier Formula for Ocular Nutrition-Optim3 (''Ocular Nutrition''), marketed by Hi-Health for the treatment of age-related macular degeneration (''AMD''), cataracts, and floaters.

The complaint alleges that Hi-Health failed to substantiate claims that its Ocular Nutrition: (1) Restores vision lost from AMD; and (2) eliminates floaters. In addition, the complaint alleges that Hi-Health falsely claimed that: (1) Several nutritional studies in responsible medical journals confirm that the ingredients available in Ocular Nutrition may help individuals with cataracts and/or floaters; and (2) a study financed by Hi-Health shows that 83% of ophthalmologists recommend or prescribe Ocular Nutrition to treat age-related macular degeneration and cataracts. The complaint alleges that there are no nutritional studies in responsible medical journals that confirm that the ingredients available in Ocular Nutrition may help individuals with cataracts and/or floaters. In fact, the complaint further alleges that a seven-year study by the National Eye Institute that included all of the primary ingredients available in Ocular Nutrition except lutein found that the ingredients used did not prevent the development or progression of cataract and did not assess the effects of any ingredients on floaters. According to the complaint, a statement issued by the National Eye Institute with regard to lutein cautions that while a number of studies suggest a link between lutein and decreased risk of eye disease, there is little, if any, definitive scientific

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

evidence at this time to support claims that lutein can decrease the risk of developing cataract.

The proposed consent order contains provisions designed to prevent Hi-Health from engaging in similar acts and practices in the future. It also requires a monetary payment to the Commission.

Part I of the proposed order bans unsubstantiated claims that the Ocular Nutrition supplement, or any substantially similar product (1) restores vision lost from macular degeneration, or (2) eliminates floaters. ''Substantially similar product'' is defined as any product that is (1) substantially similar in ingredients to Ocular Nutrition and (2) promoted for the treatment of eye diseases and conditions, including age-related macular degeneration, cataract, or floaters.

Part II is a fencing-in provision that would prohibit unsubstantiated benefits, performance, efficacy, or safety claims for any covered product or service. The proposed order defines ''covered product or service'' as any health-related service or program, dietary supplement, food, drug, or device.

Part III prohibits misrepresentations of the existence, contents, validity, results, conclusions, or interpretations of any test or study in connection with the marketing of any covered product or service.

Part IV permits drug, food, or device claims approved by the Food and Drug Administration under any tentative final or final standard or any new drug application, pursuant to the Nutrition Labeling and Education Act of 1990, or under any new medical device application, respectively.

Part V requires Hi-Health to pay $450,000 to the Commission as consumer redress no later than ten days after the order becomes final.

Parts VI and VII require Hi-Health to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, and provide copies of the order to certain of its personnel.

Part VIII requires the corporate respondent to notify the Commission of changes in corporate structure.

Part IX of the proposed order requires the individual respondent to notify the Commission of his employment status.

Part X of the order requires Hi-Health to file compliance reports with the Commission, and Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–4593 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0099]

Preferred Health Services, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 30, 2005.

ADDRESSES: Comments should refer to ''Preferred Health Services, Inc., File No. 041 0099,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Vieux, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2306.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 2, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 30, 2005. Comments should refer to ''Preferred Health Services, Inc., File No. 041 0099,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Preferred Health Services, Inc. (Preferred Health). The agreement settles charges that Preferred Health violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among members of Preferred Health to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Preferred Health that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

Preferred Health is a physician-hospital organization consisting of over 100 physicians and Oconee Memorial Hospital. Preferred Health does business in the Seneca, South Carolina, area, which is located in northwestern South Carolina. Preferred Health acts as a ''contracting representative'' for its physician members in negotiations with health plans, and a ''collective bargaining unit for the negotiation of managed care contracts.''

Preferred Health's physician members account for approximately 70% of the physicians independently practicing (that is, those not employed by area hospitals) in and around the Seneca area. To be marketable in the Seneca area, a health plan must have access to a large number of physicians who are members of Preferred Health.

Although Preferred Health purports to operate as a ''messenger model'' [2]—that is, an arrangement that does not facilitate horizontal agreements on price—it orchestrated such price agreements. In contract negotiations with payors, Preferred Health uses a physician fee schedule created by its Executive Director and approved by its Board of Directors. Preferred Health's membership agreement automatically binds physician members to contracts using the Preferred Health fee schedule. Whenever a health plan rejects the Preferred Health fee schedule, Preferred Health's Executive Director negotiates, under the Board's direction, a contract with a ''comparable'' fee schedule. The Executive Director transmits these contracts to the Board, and then to the physician members if the Board approves it. If a contract contains a Board-approved ''comparable'' fee schedule, physician members have 30 days to reject the contract. The only recourse available to a physician member who rejects a contract with a ''comparable'' fee schedule is to terminate his or her membership in Preferred Health.

Preferred Health has orchestrated collective agreements on fees and other terms of dealing with health plans, carried out collective negotiations with health plans, fostered refusals to deal, and threatened to refuse to deal with health plans that resisted Respondent's desired terms. Respondent succeeded in forcing numerous health plans to raise the fees paid to Preferred Health physician members, and thereby raised the cost of medical care in the Seneca area. Preferred Health engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees. By the acts set forth in the Complaint, Respondent violated section 5 of the FTC Act.

[2] Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a ''messenger model'' arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. *See http://www.ftc.gov/reports/hlth3s.htm#9.*

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits Respondent from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the Respondent.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondent from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes Respondent from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II.E contains certain additional ''fencing-in'' relief, which is imposed for three years. Under this provision, Preferred Health may not, in connection with physician health plan contracting, either (1) act as an agent for any physicians; or (2) use an agent with respect to contracting. Such relief, designed to assure that Preferred Health does not seek to use other arrangements to continue the challenged conduct, is warranted in light of the complaint charges that Preferred Health engaged in overt price-fixing behavior, and its assertion that its conduct was legitimate ''messengering'' of health plan contract offers.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Respondent would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians in a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' The arrangement, however, must not facilitate the refusal

of, or restrict, physicians in contracting with payors outside of the arrangement.

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, for three years, requires Preferred Health to notify the Commission before participating in contracting with health plans on behalf of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement. Paragraph III sets out the information necessary to make the notification complete.

Paragraph IV, for three years after the bar on messengering ends, requires Preferred Health to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph IV also sets out the information necessary to make the notification complete.

Paragraph V requires Preferred Health to distribute the complaint and order to all physicians who have participated in Preferred Health, and to payors that negotiated contracts with Preferred Health or indicated an interest in contracting with Preferred Health. Paragraph V.C requires Preferred Health, at any payor's request and without penalty, or within one year after the Order is made final, to terminate its current contracts with respect to providing physician services. Paragraph V.D requires Preferred Health to distribute payor requests for contract termination to all physicians who participate in Preferred Health. Paragraph V.E.1.b requires Preferred Health to distribute the complaint and order to any payors that negotiate contracts with Preferred Health in the next three years.

Paragraphs VI and VII of the proposed order impose various obligations on Respondent to report or provide access to information to the Commission to facilitate monitoring Respondent's compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission, Chairman Majoras not participating.

Donald S. Clark,

Secretary.

[FR Doc. 05–4594 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Comparisons of Community with Facility Management of Malaria and Pneumonia in Rural Tanzania; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to establish the effectiveness of combination antimalarial therapy policies within the context of intense malaria transmission and to develop an evidence-based comparison between two approaches to managing febrile illness in rural sub-Sahara Africa. Specifically, the two approaches of interest are an enhanced facility-based management approach and a community- or household-based approach. The aim is to generate detailed data enabling international public health organizations to make recommendations to national governments based on quality scientific evidence. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the Ifakara Health Research and Development Centre, Ifakara, Tanzania. No other applications are solicited.

The Ifakara Health Research and Development Centre (IHRDC) is the only institution located in Tanzania that possesses the requisite scientific and technical expertise, the infrastructure capacity and experience in conducting the described research topics and which has collaborative relationships with the Ministry of Health to ensure that all aspects of this agreement can be fulfilled. Because of its work in malaria for more than 15 years, the IHDRC is an internationally respected research institution.

Investigators at IHDRC have a detailed understanding of the epidemiologic patterns and geographic distribution of malaria infection and transmission in their area, are actively engaged in using state-of-the-art techniques for evaluating antimicrobial drug resistance, and have needed and proven expertise in socio-behavioral and economic research related to febrile illness. In addition, the IHDRC has the following required experience and capabilities:

- Maintains a DSS covering over 100,000 individuals, allowing for measurement of public health impact of malaria treatment policies.
- Proven experience in carrying out large-scale community-based public health interventions, to conduct malaria research, and to correctly diagnose drug resistant malaria infections in its laboratories and field activities.
- Located in an area of very intense malaria transmission in a country that is has adopted a national malaria treatment policy of ACT while remaining actively engaged in investigating future treatment options.
- Maintains a close relationship with the National Malaria Control Program of the Ministry of Health and as well as close relationship with other relevant research and public health entities in the country and region.
- Actively engaged in research activities that are directly related to the objectives of this RFA with proven experience and capacity.

C. Funding

Approximately $1,000,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2005, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Dr. Trudy Messmer, Scientific Review Administrator, 1600 Clifton Rd, MS C–19, Atlanta, GA 30333, Telephone: 404–639–3770, e-mail: *TMessmer@cdc.gov.*

Dated: March 3, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–4552 Filed 3–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0075]

Notice to Industry on the Development of a Web-Based System for Obtaining a User Fee Payment Identification Number and Prescription Drug User Fee Cover Sheet (FDA Form 3397); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new Web-based system to electronically obtain a user fee payment identification number and to submit your Prescription Drug User Fee (PDUFA) cover sheet (FDA Form 3397) to the Office of Financial Management. The system will enable FDA to electronically track your company's application payments and will allow your organization to obtain the user fee payment identification number over the Web. By making the user fee payment identification number and the PDUFA cover sheet available on-line, we will be able to improve service, one of PDUFA's performance goals.

DATES: Submit written or electronic comments by April 8, 2005.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to *http://www.fda.gov/dockets.ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the new system.

FOR FURTHER INFORMATION CONTACT: Martha Louviere, Office of Financial Management (HFA–100), Food and Drug Administration, 5600 Fishers Lane, rm. 11–83, Rockville, MD 20857, 301–827–3912, e-mail: *userfees@fda.gov*.

SUPPLEMENTARY INFORMATION: Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay fees for certain new human drug applications, biologics applications, and supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee has been submitted. Form FDA 3397, the user fee cover sheet, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to help FDA track payments.

The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system to assign the user fee payment identification number. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

FDA has created an on-line user fee cover sheet which will assist FDA and pharmaceutical companies by improving service and reducing the time for applicants and their affiliates to file and comply with PDUFA through more automated channels. The new system will allow customers to obtain a user fee payment identification number, create and complete a user fee cover sheet on-line, and submit it electronically to FDA's Office of Financial Management. It will decrease the administrative burden on FDA, improve service by automating the cover sheet application process, and allow applicants to securely view their payments received by FDA on-line. This new system, which replaces the previous process, will be available on February 15, 2005.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

You can access this new system from the *http://www.fda.gov/oc/pdufa/coversheet.html* Web site. You may then select ''PDUFA User Fee Cover Sheet'' from Web site. Detailed instructions on how to use the user fee system are included at the Web site.

Dated: March 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4635 Filed 3–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 5, 2005, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Cathy Groupe, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *groupec@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information line for up-to-date information on this meeting.

Agenda: The committee will discuss supplemental new drug application (sNDA) S–036 to approved new drug application (NDA) 19–787, NORVASC (amlodipine besylate) Tablets (2.5 milligrams (mg), 5 mg, and 10 mg), Pfizer Inc., proposing a change in labeling for the following two additional indications of: (1) Reducing the risk of fatal coronary heart disease and nonfatal myocardial infarction and (2) reducing the risk of stroke, based on the effectiveness demonstrated in the

antihypertensive and lipid lowering treatment to prevent heart attack trial (ALLHAT).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 29, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 29, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 2, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–4522 Filed 3–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Intravenous Immune Globulins in the 21st Century: Progress and Challenges in Efficacy, Safety, and Paths to Licensure; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Intravenous Immune Globulins in the 21st Century: Progress and Challenges in Efficacy, Safety, and Paths to Licensure.'' The purpose of the workshop is to address current topics on the safety and efficacy of immune globulin products.

Date and Time: The workshop will be held on April 13, 2005, from 8 a.m. to 5:30 p.m.

Location: The workshop will be held at the Lister Hill Auditorium, Bldg. 38A, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, FAX: 301–827–2843, e-mail: *dawsonr@cber.fda.gov*.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone, and fax numbers) to the contact person by April 1, 2005. There is no registration fee for the public workshop. Because seating is limited, we recommend early registration. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:15 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA, in cooperation with the Primary Immune Deficiency Foundation, is announcing the following public workshop: ''Intravenous Immune Globulins in the 21st Century: Progress and Challenges in Efficacy, Safety, and Paths to Licensure.'' The 1-day workshop, consisting of three successive sessions, will discuss the following topics:

- Specific antibody levels in intravenous immune globulins (IGIVs) to common and emerging pathogens, including research questions concerning antibody levels and efficacy;
- Adverse events, including specific categories of adverse events, as well as current methods of surveillance, responses to adverse event information, and the utility of different monitoring strategies; and
- Paradigms for IGIV and subcutaneous immune globulin licensure for treatment of Primary Immune Deficiency.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop–min.htm*.

Dated: March 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4634 Filed 3–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1993D–0394]

Draft Guideline for the Validation of Blood Establishment Computer Systems; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a guidance that was issued on September 28, 1993.

DATES: March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice containing a cumulative list of guidances available from the agency that published on January 5, 2005 (70 FR 824), FDA included the guidance document entitled, ''Draft Guideline for the Validation of Blood Establishment Computer Systems.'' This document is being withdrawn because it no longer reflects all of FDA's current considerations on a guidance to assist manufacturers of blood and blood components, including blood banks, plasmapheresis centers, and transfusion services in developing a computerized system validation program. FDA is revising the guidance and a draft guidance for public comment will be issued in the future.

Dated: March 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4633 Filed 3–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Commission on Systemic Interoperability, March 15,

2005, 8 a.m. to March 15, 2005, 4 p.m., Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, Washington, DC 20201, which was published in the **Federal Register** on February 4, 2005, 70 FR 6025.

The meeting location has changed to the National Library of Medicine, Building 38, 2nd Floor Mezzanine, Board Room, 8600 Rockville Pike, Bethesda, Maryland 20894. The meeting is open to the public.

Dated: March 2, 2005.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4569 Filed 3–8–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Request for Public Comment on Draft Reports on Xenotransplantation

The Secretary's Advisory Committee on Xenotransplantation (SACX) is requesting public comment on two draft reports on xenotransplantation. One is on the state of the science of xenotransplantation and the other is on informed consent issues in clinical trials involving xenotransplantation.

Before the reports are finalized and transmitted to the Secretary, the SACX is requesting comments on the draft reports from members of the public. All public comments received will be considered in finalizing the reports. Comments should be submitted by March 31, 2005. Received comments will be available for public inspection at the NIH Office of Biotechnology Activities, Monday through Friday between the hours of 8:30 a.m. and 5 p.m., at the contact address noted below.

Information: The Secretary's Advisory Committee on Xenotransplantation, Department of Health and Human Services, considers the scientific, medical, social, and ethical issues and the public health concerns raised by xenotransplantation and makes recommendations to the Secretary on policy and procedures. The Committee's charges include advising on the current state of knowledge regarding xenotransplantation and on the potential for transmission of infectious diseases as a consequence of xenotransplantation; and deliberating on medical, public health, ethical, legal and socioeconomic issues, including international policies and developments that are relevant to xenotransplantation.

Overview of Drafts: The state of the science report addresses the scientific challenges in xenotransplantation, the infectious disease risks associated with xenotransplantation, public health concerns associated with xenotourism, knowledge gaps and resource limitations, and alternative strategies to xenotransplantation. The report also proposes a series of recommendations regarding these issues.

The report on informed consent issues in clinical research involving xenotransplantation addresses the ethical foundations and functions of informed consent, components of informed consent, the informed consent process, informed consent forms, and special issues raised by xenotransplantation. The report proposes a series of recommendations regarding informed consent in xenotransplantation research.

The full draft reports are available electronically at *http://www4.od.nih.gov/oba/Sacx.htm.* A paper or electronic copy can also be requested by calling the NIH Office of Biotechnology Activities at (301) 496–9838 or by e-mailing Mary Groesch at *groeschm@od.nih.gov.*

Contact Person: Mary Groesch, Ph.D., Executive Director, Secretary's Advisory Committee on Xenotransplantation, Office of Biotechnology Activities, Rockledge I, Room 750, Bethesda, MD 20892. (301) 496–9838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4568 Filed 3–8–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Styrene Expert Panel Meeting and Availability of the Draft Expert Panel Report on Styrene; Request for Public Comment on the Draft Report

AGENCY: National Institute for Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Announcement of a meeting and request for comment.

SUMMARY: The CERHR announces the availability of the draft expert panel report for styrene on March 18, 2005, from the CERHR Web site *(http://cerhr.niehs.nih.gov)* or in printed text from the CERHR (*see* **FOR FURTHER INFORMATION CONTACT** below). The CERHR invites the submission of public comments on sections 1–4 of the draft expert panel report (see **SUPPLEMENTARY INFORMATION** below). The expert panel will meet on June 1–3, 2005, at the Holiday Inn Old Town Select in Alexandria, Virginia to review and revise the draft expert panel report and reach conclusions regarding whether exposure to styrene is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs. CERHR expert panel meetings are open to the public with time scheduled for oral public comment. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the CERHR will post the report on its Web site and solicit public comment on it through a **Federal Register** notice.

DATES: The expert panel meeting for styrene will be held on June 1–3, 2005. Sections 1–4 of the draft expert panel report will be available for public comment on March 18, 2005. Written public comments on the draft report must be received by May 2, 2005. Time is set-aside at the expert panel meeting on June 1, 2005 for oral public comments. Individuals wishing to make oral public comments are asked to contact Dr. Michael D. Shelby, CERHR Director, by May 25, 2005, and if possible, also send a copy of the statement or talking points at that time. Persons needing special assistance in order to attend are asked to contact Dr. Shelby at least 7 business days prior to the meeting.

ADDRESSES: The expert panel meeting for styrene will be held at the Holiday

Inn Old Town Select Alexandria, Virginia (telephone: (703) 549–6080, facsimile: (703) 684–6508). Comments on the draft expert panel report should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. Michael D. Shelby, CERHR Director, (919) 541–3455, *shelby@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

Styrene (ethenylbenzene; CAS RN: 100–42–5) is a high production volume chemical used in the production of polystyrene resins and as a co-polymer with acrylonitrile and 1,3-butadiene. Styrene is found in items such as foam cups, dental fillings, matrices for ion exchange filters, construction materials, and boats. It is also used in protective coatings, reinforced glass fiber, agricultural products, and as a food additive. The public can be exposed to styrene by ingesting food or drink that has been in contact with styrene polymers or through inhalation of polluted air and cigarette smoke. CERHR selected styrene for expert panel evaluation because of: (1) Public concern about styrene exposure and (2) recently available exposure studies.

At the expert panel meeting, the expert panel will review and revise the draft expert panel report and reach conclusions regarding whether exposure to styrene is a hazard to human reproduction or development. Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be prepared at expert panel meeting)

Request for Comments

The CERHR invites written public comments on sections 1–4 of the draft expert panel report on styrene. Any comments received will be posted on the CERHR Web site prior to the meeting and distributed to the expert panel and CERHR staff for their consideration in revising the draft report and preparing for the expert panel meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Shelby (*see* **ADDRESSES** above) for receipt by May 2.

Time is set-aside on June 1, 2005, for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, e-mail and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to Dr. Shelby by May 25. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on June 1, 2005, from 7:30–8:30 a.m. Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Preliminary Agenda

The meeting begins each day at 8:30 a.m. On June 1 and 2, it is anticipated that a lunch break will occur from noon–1 p.m. and the meeting will adjourn at 5–6 p.m. The meeting is expected to adjourn by noon on June 3; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below.

June 1, 2005

- Opening remarks.
- Oral public comments (7 minutes per speaker; one representative per group).
- Review of sections 1–4 of the draft expert panel report on styrene.
- Discussion of section 5.0 Summary, Conclusions, and Critical Data Needs.

June 2, 2005

- Discussion of section 5.0 Summary, Conclusions, and Critical Data Needs.
- Preparation of draft summaries and conclusion statements.

June 3, 2005

- Presentation, discussion of, and agreement on summaries, conclusions, and data needs.
- Closing comments.

Expert Panel Roster

The CERHR expert panel is composed of independent scientists selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for this review.

Ulrike Luderer, Ph.D., M.D., M.P.H. (Chair)—University of California, Irvine, CA

Thomas F. X. Collins, Ph.D.—U.S. Food and Drug Administration, Laurel, MD

George P. Daston, Ph.D.—The Procter & Gamble Company, Cincinnati, OH

Lawrence J. Fischer, Ph.D.—Michigan State University, East Lansing, MI

Ronald Gray, M.D., M.Sc.—The Johns Hopkins University, Baltimore, MD

Franklin E. Mirer, Ph.D., CIH—International Union, UAW, Detroit, MI

Andrew D. Olshan, Ph.D.—University of North Carolina, Chapel Hill, NC

R. Woodrow Setzer, Ph.D.—U.S. Environmental Protection Agency, Research Triangle Park, NC

Kimberly A. Treinen, Ph.D.—Schering-Plough Research Institute, Lafayette, NJ

Roel Vermeulen, Ph.D.—National Cancer Institute, Bethesda, MD

Background Information on the CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (*see* **FOR FURTHER INFORMATION CONTACT** above). The CERHR selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** on July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: February 28, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–4567 Filed 3–8–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20463]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, and certification of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Tuesday, April 5, 2005, from 8:30 a.m. to 4:30 p.m. and on Wednesday, April 6, 2005, from 8:30 a.m. to 4 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before March 22, 2005. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before March 22, 2005.

ADDRESSES: MERPAC will meet on both days in the Classroom Building Auditorium of the Calhoon MEBA Engineering School, 27050 St. Michaels Road, Easton, MD 21601. Further directions regarding the location of the Calhoon MEBA Engineering School may be obtained by contacting 410–822–9600. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Meeting on April 5, 2005

The full committee will meet to discuss the objectives for the meeting. The working groups addressing the following task statements may meet to deliberate: Task Statement 30, concerning utilizing military sea service for STCW certifications; Task Statement 47, concerning recommendations on knowledge and practical qualifications for engineers at the operational and management levels to serve on steam propelled vessels; Task Statement 48, concerning recommendations to develop training and service requirements for personnel with limited engineer licenses to obtain STCW OICEW and unlimited third assistant engineer licenses; and Task Statement 49, concerning recommendations for use of a model sea course project in conjunction with an approved program for officer in charge of an engineering watch coming up through the hawse pipe. In addition, new working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public. All task statements may be viewed at the MERPAC Web site at *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm*.

At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of Meeting on April 6, 2005

The agenda comprises the following:

(1) Introduction.

(2) Working Groups' Reports:

(a) Task Statement 30, concerning utilizing military sea service for STCW certifications;

(b) Task Statement 47, concerning recommendations on knowledge and practical qualifications for engineers at the operational and management levels to serve on steam propelled vessels;

(c) Task Statement 48, concerning recommendations to develop training and service requirements for personnel with limited engineer licenses to obtain STCW OICEW and unlimited third assistant engineer licenses;

(d) Task Statement 49, concerning recommendations for use of a model sea course project in conjunction with an approved program for officer in charge of an engineering watch coming up through the hawse pipe, and

(e) Other task statements which may have been adopted for discussion and action.

(3) Other items to be discussed:

(a) Standing Committee—Prevention Through People.

(b) Briefings concerning on-going projects of interest to MERPAC.

(c) Other items brought up for discussion by the committee or the public.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify Mr. Gould no later than March 22, 2005. Written material for distribution at a meeting should reach the Coast Guard no later than March 22, 2005. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to Mr. Gould no later than March 22, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Gould as soon as possible.

Dated: March 1, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–4622 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application for Waiver of Passport and/or Visa (Form I–193)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Waiver of Passport and/or Visa (Form I–193). This request for comment is being made pursuant to the

Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Waiver of Passport and/or Visa.

OMB Number: 1651–0107.

Form Number: I–193.

Abstract: This information collection is used by CBP to determine an applicant's eligibility to enter the United States. This form is used by aliens who wish to waive the documentary requirements for passport's and/or visas due to an unforeseen emergency.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 4,150.

Estimated Total Annualized Cost on the Public: $4,916,500.

Dated: March 2, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–4517 Filed 3–8–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Automated Clearinghouse Credit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Automated Clearinghouse Credit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Automated Clearinghouse Credit.

OMB Number: 1651–0078.

Form Number: N/A.

Abstract: The information is to be used by CBP to send information to the company (such as revised format requirements) and to contact participating companies if there is a payment problem.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 65.

Estimated Time Per Respondent: 3.8 hours.

Estimated Total Annual Burden Hours: 249.

Estimated Total Annualized Cost on the Public: $4395.85.

Dated: March 1, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–4518 Filed 3–8–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Drawback Process Regulations and Entry Collection Documents

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Drawback Process Regulations and Entry Collection Documents. This request for

comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Drawback Process Regulations and Entry Collection Documents.

OMB Number: 1651–0075.

Form Number: Forms CBP–7551, 7552, 7553.

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 8,150.

Estimated Time Per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 90,000.

Estimated Total Annualized Cost on the Public: $3,098,405.86.

Dated: March 1, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–4519 Filed 3–8–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1651–0067.

Form Number: N/A.

Abstract: This collection is used to ensure revenue collections and to provide duty free entry of merchandise eligible for reduced duty treatment under provisions of Harmonized Tariff Schedule of the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 19,433.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 14,575.

Estimated Total Annualized Cost on the Public: $353,715.

Dated: March 1, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–4520 Filed 3–8–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application to Payoff or Discharge Alien Crewman (Form I–408)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application to Pay Off or Discharge Alien Crewman (Form I–408). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application to Pay Off or Discharge Alien Crewman.

OMB Number: 1651–0106.

Form Number: I–408.

Abstract: This form is used by owner, agent, consignee, master or commanding of any vessel or aircraft to obtain permission from CBP to pay off or discharge any alien crewman.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 85,000.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Estimated Total Annualized Cost on the Public: $353,600.

Dated: March 2, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–4521 Filed 3–8–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for the Agassiz National Wildlife Refuge, Marshall County, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Agassiz NWR, Minnesota.

The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

DATES: Written comments on the Draft CCP/EA will be accepted up to 30 days after publication of this notice in the **Federal Register**.

ADDRESSES: Copies of the Draft CCP are available on compact disk or hard copy. You may access and download a copy via the planning Web site (*http://midwest.fws.gov/planning/agassiz/index.html*) or you may obtain a copy by writing to the following address: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111.

FOR FURTHER INFORMATION CONTACT: Margaret Anderson at (218) 449–4115.

SUPPLEMENTARY INFORMATION: The Agassiz National Wildlife, established in 1937, is located in the northwest corner of Minnesota at the juncture of the northern boreal forest, the eastern deciduous forest, and the tallgrass prairie. The Refuge's 61,500 acres are a key breeding ground for 17 species of ducks, as well as an important migration rest stop for waterfowl, but it is also noted for gray wolves, moose, and nesting Bald Eagles.

The EA evaluates three different approaches, or alternatives, to future management of the Agassiz NWR. The plan also identifies wildlife-dependent recreational opportunities available to the public including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The preferred alternative calls for (1) larger areas of prairie grasslands and sedge meadow habitats, (2) increased winter wildlife observation opportunities, and (3) expanded deer hunting opportunities, late-season ruffed grouse hunting, and an early fall youth waterfowl hunt on a portion of the refuge.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: November 8, 2004.

Charles M. Wooley,

Acting Regional Director, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, MN.

[FR Doc. 05–4557 Filed 3–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Incidental Take Permits on 55 Applications for Proposed Single Family and Duplex Residential Construction on the Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of applications for incidental take permits and habitat conservation plans and environmental assessment.

SUMMARY: Dr. W. H. Abraham, Mr. Terry Bartee, Ms. Sarah Bertrand, Ms. Edith Bolster, Mr. Billy Bullock, Ms. Jerilyn Byrd, Mr. Walter Cooper, Mr. Thomas Cox, Mr. and Mrs. George Cromer, Mr. Larry Dawson, Mr. William Denholm, Ms. Ellen Dinges, Mr. Jody Greene, Mr. Perry Hand, Mr. Leo Hastings, Mr. Asa Hollowell, Mr. Robert Howell, Mr. Trice Hulling, Ms. Virginia Jordan, Mr. Kerwin Lane, Mr. John Lucas, Ms. Linda Mangold, Mr. Martens, Ms. Cynthia Meichner, Mr. and Mrs. Kevin Nagley, Mr. Greg Nayden (3 applications), Mr. Robert Pate, Ms. Terry Pettus, Mr. Steven Quinn (2 applications), Mr. James Randolph, Mr. Robert Relinski (2 applications), Mr. Jeffrey Ryder, Sage Development (10 applications), Mr. Jose Silvas, Mr. P.K. Smartt, Mr. Delmar Smith, Mr. Jim Stephenson, Mr. Richard Willoughby, Mr. William Yates, Mr. Robert Yokley, Mr. Jim Young, and Ms. Debra Zak have applied to the Fish and Wildlife Service (Service) for incidental take permits (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act) for the take of Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM). The proposed take would be incidental to the otherwise lawful activity of constructing 49 single family and 6 duplex residences in Baldwin County, Alabama.

The applicants have prepared Habitat Conservation Plans (HCP) in accordance with section 10(a)(2)(A) of the Act, specifying, among other things, the impacts that are likely to result from the taking and the measures each applicant would undertake to minimize and mitigate such impacts. A detailed description of the proposed minimization and mitigation measures is provided in the applicants' HCPs, and in our Environmental Assessment (EA). The proposed action would involve approval of the HCPs if the statutory issuance criteria are satisfied. The EA considers the environmental impacts of the proposed projects on, including but not limited to, endangered and threatened species.

DATES: Written comments on the ITP applications, HCPs, and EA should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before April 8, 2005.

ADDRESSES: Persons wishing to review the applications, HCPs, and EA may obtain an electronic copy on compact disk by writing the Service's Southeast Regional Office, Atlanta, Georgia, at the address below. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or the Daphne Ecological Services Field Office, 1208–B Main Street, Daphne, Alabama 36526. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Please reference the ITP for 55 applications for residential development, Batch II, in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional HCP Coordinator (*see* **ADDRESSES** above), telephone: (404) 679–4144, or Ms. Barbara Allen, Fish and Wildlife Service Biologist, Daphne Field Office (*see* **ADDRESSES** above), telephone: (251) 441–5873.

SUPPLEMENTARY INFORMATION: We announce the availability of an EA and HCPs/applications for incidental take permits. The EA is a combined assessment addressing the environmental impacts associated with these projects both individually and cumulatively. Copies of the EA and the individual HCPs may be obtained by making a request, in writing, to the Regional Office (*see* **ADDRESSES**). This notice advises the public that we have opened the comment period on the permit applications and the EA. The permit applications each include HCPs. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations at 40 CFR 1506.6.

We specifically request information, views, and opinions from the public on the Federal action, including the identification of any other aspects of the human environment not already identified in our EA. Further, we specifically solicit information regarding the adequacy of the HCPs as measured against our ITP issuance criteria found in 50 CFR 13.21 and 17.22.

If you wish to comment, you may submit comments by any one of several methods. Please reference ITP for 55 applications for residential development, Batch II, in such comments. You may mail comments to our Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *aaron_valenta@fws.gov.* Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return mailing address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed (*see* **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand-deliver comments to either Service office listed (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

The EA considers the direct, indirect, and cumulative effects of the proposed incidental take and the measures that will be implemented to minimize and mitigate such impacts. The EA contains an analysis of three alternatives for each site, including: (1) No action alternative; (2) development with wholesale clearing, grading, and formal landscaping; and (3) the applicant's preferred alternative. Under alternative 1, we would not issue the ITPs and no new construction would result. Alternative 2 would result in the construction of single family and duplex

residences and the loss of 20.30 acres of ABM habitat. Alternative 3 would result in a loss of 4.34 acres consisting of the footprint of the residences and access driveways. Project effects are considered in the EA in terms of affected environment, environmental consequences, and cumulative effects to the human and natural environment.

The ABM is one of eight subspecies of the old field mouse restricted to coastal habitats. We estimate that ABM historically occupied approximately 45 km (28 mi) of shoreline and currently occupy approximately 37 kilometers (23 miles) of shoreline.

Prior to the 2004 hurricane season, we believed that ABM utilized approximately 2,697 acres of lands, which includes Gulf State Park and environs, which we have identified as ABM habitat. We have determined that these sites provide suitable habitat for ABM because they provide the following:

1. Cover or shelter;
2. Food, water, air, light, minerals, or other nutritional or physiological requirements;
3. Sites for breeding and rearing offspring.

Under the preferred alternative, project development will result in the loss of 4.34 acres of ABM habitat. Thus, this action will result in the loss of approximately 0.02 percent of the previously mapped total estimated ABM habitat of 2,697 acres.

The EA considers the potential effects of the proposed projects on the ABM. Construction activities associated with site preparation, heavy equipment operations, and site alterations within habitat occupied by ABM may impact individual ABM by crushing or entombing them in their burrows, or by impairing essential breeding, feeding, or sheltering behaviors. The additional residences also increase the risk of competitors and predators of ABM such as house cats and non-native mice.

The EA considers the potential effects of the projects on nesting sea turtles. The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350 to 2,300 nests annually. Our turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the Gulf-fronting sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests. During the 2002 nesting season, 63 nests were documented along the Alabama coast.

The Kemps ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemps ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Islands National Seashore in Perdido Key, Florida. In 2001, two dead Kemps ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

Conservation measures, such as sea-turtle friendly lighting, removal of beach furniture from beaches during nesting season, and allowing volunteers to mark and monitor nests on each of the properties have been incorporated into each of the applicant's HCPs. These measures are expected to preclude any take of sea turtles.

Under section 9 of the Act and its implementing regulations, ''taking'' of endangered and threatened wildlife is prohibited. However, we, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The applicants have prepared HCPs that include measures for the long-term protection, management, and enhancement of ABM habitat as required for the incidental take permit application as part of the proposed project.

We will evaluate whether the proposed issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Dated: January 27, 2005.

Sam D. Hamilton,

Regional Director, Fish and Wildlife Service.

[FR Doc. 05–4553 Filed 3–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of information collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on the Indian Service Population and Labor Force Estimates as we prepare to renew the collection as required by the Paperwork Reduction Act.

DATES: Submit comments on or before May 9, 2005.

ADDRESSES: Your comments and suggestion on the requirements should be made directly to Mr. Harry Rainbolt, Budget Officer, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1951 Constitution Avenue, Mail Stop 321–SIB, NW., Washington, DC 20245; Telephone (202) 513–7630.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Mr. Harry Rainbolt at (202) 513–7630.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is mandated by Congress through Pub. L. 102–477, Indian Employment, Training and Related Services Demonstration Act of 1992, section 17. The Act requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population by gender, income level, age, service area and availability for work. The information is used by Congress, other Federal agencies, State and local governments and private sectors for the purpose of developing programs, planning, and to award financial assistance to American Indians.

II. Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 321–SIB, during the hours of 8 a.m. to 4 p.m., e.s.t., Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

III. Data

OMB Control Number: 1076–0147.

Type of Review: Renewal.

Title: Department of the Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Estimates.

Brief Description of Collection: The Office of Tribal Services contacted 10 of the 562 federally recognized Indian Tribes. The ten tribes contacted ranged in size from small (less than 500 members) to large tribes (more than 20,000 members). The estimated time it took each tribe to respond to the biennial report was between one hour and four days depending on the sophistication of the tribal government. All things considered, it takes each tribe an estimated eight hours to complete the survey.

Number of Respondents: 562.

Estimated Time per Response: 8 hours.

Frequency of Response: Biennially.

Total Annual Burden to Respondents: 5000 hours biennially.

Total Annual Cost to Respondents: N/A.

Dated: March 2, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–4555 Filed 3–8–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bear River Band of Rohnerville Rancheria—Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Bear River Band of Rohnerville Rancheria's Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Bear River Band of Rohnerville Rancheria's tribal land. The land is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the Bear River Band of Rohnerville Rancheria's tribal land and will increase the ability of the tribal government to control the tribe's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This ordinance is effective on March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Doka, Acting Tribal Operations Officer, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825, Phone (916) 978–6067, fax (916) 978–6099; or Ralph Gonzales, Division of Tribal Justice Support, Office of Tribal Services, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Bear River Band of Rohnerville Rancheria Tribal Council adopted its Liquor Control Ordinance by Resolution No. 04–87 on June 30, 2004. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Bear River Band of Rohnerville Rancheria's tribal land.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.l.

I certify that the Tribal Council duly adopted this Liquor Ordinance No. 04–04, of the Bear River Band of Rohnerville Rancheria, on June 20, 2004.

Dated: March 2, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Bear River Band of Rohnerville Rancheria's Liquor Ordinance No. 04–04 reads as follows:

Resolution No: 04–87

Approved: June 30, 2004

A Resolution by the Bear River Band of Rohnerville Rancheria Tribal Council Adopting and Approving the Liquor Regulation and Licensing Ordinance No. 04–04.

Whereas, the Bear River Band of Rohnerville Rancheria is a federally recognized Indian tribe eligible for all rights and privileges afforded to recognized Tribes; and,

Whereas, the Bear River Band of Rohnerville Rancheria Tribal Council is the governing body of the Bear River Band of Rohnerville Rancheria under the authority of the Constitution of the Bear River Band of Rohnerville Rancheria; and,

Whereas, the Bear River Band of the Rohnerville Rancheria desires to adopt the Liquor Regulation and Licensing Ordinance No. 04–04.

Now Therefore Be it Resolved that the Bear River Band of Rohnerville Rancheria hereby adopts and approves Ordinance No. 04–04, ''Liquor Regulation and Licensing Ordinance.''

Be it Further Resolved that the Chairperson is hereby authorized to sign and Members of the Council to attest all necessary documents to make such requests; and,

Be it Finally Resolved the above signatory powers are in full force and effect until specifically revoked by a duly adopted resolution of the Bear River Band of Rohnerville Rancheria Tribal Council.

C*E*R*T*I*F*I*C*A*T*I*O*N

This is to certify that the Bear River Band of Rohnerville Rancheria Tribal Council on June 30, 2004 by a vote of *4* In Favor, *0* Opposed, *0* Abstaining, and *1* Absent.

Attested by:

6/30/04

(Leonard Bowman, Tribal Council Chairperson)

(Date)

7/6/04 _____
(Aileen Meyer, Tribal Council Secretary)
(Date)

Tribal Ordinance: No. 04–04

Date Adopted: June 30, 2004

Liquor Regulation and Licensing Ordinance No. 04–04

Article I: Declaration of Public Policy and Purpose

Section 1.1 The introduction, possession and sale of liquor on the lands of the lands of the Bear River Band of Rohnerville Rancheria (''Tribe'') is a matter of special concern to the Tribe.

Section 1.2 Federal law, *see, e.g.,* 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), and expressly delegates to the Tribe the decision regarding when and to what extent liquor transactions shall be permitted on lands subject to the Tribe's jurisdiction.

Section 1.3 The Tribal Council of the Bear River Band of Rohnerville Rancheria (''Tribal Council'') has the power under Article VIII of the Tribe's Constitution to enact ordinances to safeguard and provide for the health, safety and welfare of the members of the Tribe and persons within the Tribe's jurisdiction, and has determined that it is in the Tribe's best interests to enact a tribal ordinance governing the introduction, possession and sale of liquor on the lands subject to the Tribe's jurisdiction, and which limits the purchase, distribution, and/or sale of liquor within the exterior boundaries of the Tribe's trust lands only to premises licensed and regulated by the Tribe.

Section 1.4 The Tribe hereby prohibits the sale or other commercial distribution of liquor on the Tribe's trust lands, except at premises owned and operated by or under supervision of the Tribe and expressly licensed to sell or commercially distribute liquor. This prohibition against the sale or other commercial distribution of liquor shall not apply to the personal use, possession or consumption of liquor in private homes located on tribal trust lands.

Section 1.5 The Tribe finds that violations of this Ordinance would damage the Tribe in the amount of five hundred dollars ($500) per violation, based upon the estimated costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the Tribal Council may, in its discretion, impose a tax on the sale of liquor on the Tribe's trust lands. Based upon the foregoing findings and determinations, the Tribe hereby ordains as follows:

Article II: Definitions

As used in this title, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 2.1 ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2.2 ''Alcoholic Beverage'' has the same meaning as the term ''liquor'' as defined in Article II, Section 5 of this Ordinance.

Section 2.3 ''Bar'' means any establishment with special space and accommodations for sale by the glass or other unsealed container and for consumption on the premises, of liquor, as herein defined.

Section 2.4 ''Beer'' means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, ''beer'' includes sake (Japanese rice wine), and any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as ''strong beer.''

Section 2.5 ''Liquor'' means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.6 ''Liquor Store'' means any store at which liquor is sold in sealed pre-packaged form, and, for the purpose of this Ordinance, includes any store only a portion of which is devoted to the sale of liquor or beer.

Section 2.7 ''Malt liquor'' means beer, strong beer, ale, stout and porter.

Section 2.8 ''Package'' means any container or receptacle used for holding liquor.

Section 2.9 ''Public Place'' includes gaming facilities, eating facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access or to which the general public has been invited, and which generally are used by the public.

Section 2.10 ''Sale'' and ''Sell'' means any exchange, barter, and/or traffic in liquor; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person. ''Sale'' and ''Sell'' includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer or consumer, but title is retained by the vendor, retailer, manufacturer or wholesaler as security for payment of the purchase price. Specifically included is any transaction whereby, for any consideration, title or possession of alcoholic beverages is transferred from one person or entity to another, and includes the delivery of alcoholic beverages pursuant to an order placed for such beverages, or soliciting or receiving such beverages. ''Sale'' or ''Sell'' does not include the gift of alcoholic beverages among family members or personal acquaintances in non-commercial circumstances,

Section 2.11 ''Spirits'' means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.12 ''Tribal Council'' means the Tribal Council as defined in Article IV of the Constitution of the Bear River Band of Rohnerville Rancheria.

Section 2.13 ''General Council'' means the enrolled membership of the Bear River Band of Rohnerville Rancheria eighteen years of age or older.

Section 2.14 ''Tribal Land'' means any land within or without the exterior boundaries of the original Rohnerville Rancheria and any other lands held in trust by the United States for the Bear River Band of Rohnerville Rancheria.

Section 2.15 ''Wine'' means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III: Powers of Enforcement

Section 3.1 The Tribal Council, in furtherance of this Ordinance, shall have the following powers and duties:

(a) To publish and enforce such rules and regulations governing the sale, manufacture and distribution of alcoholic beverages in public places on the tribal lands as the Tribal Council may deem necessary;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions under this Ordinance;

(c) To issue licenses permitting the sale, manufacture and/or distribution of liquor on the Tribe's trust lands;

(d) To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in any court of competent jurisdiction to enforce this Ordinance as the Tribal Council determines is necessary;

(f) To determine and seek damages for violation of this Ordinance;

(g) To make reports to the General Council at least semi-annually concerning the implementation of this Ordinance;

(h) To set, levy and collect sales taxes and fees on liquor distribution, sales and/or consumption in commercial premises, and the issuance of liquor licenses, and to keep accurate records, books and accounts of such taxes and fees and expenditures therefrom; and,

(i) To exercise such other powers as the Tribal Council may determine by duly-enacted resolution may be necessary to implement this Ordinance and accomplish its purposes.

Section 3.2 Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Tribal Council and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or,

(b) Waive the Tribe's immunity from suit without the express and separate consent of the General Council.

Section 3.3 Inspection Rights. The public places on or within which liquor is sold, distributed or consumed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto. The Tribal Council may delegate all or part of its inspection authority to the Tribal Gaming Commission or other subordinate tribal entity or agency, or may contract with third parties for this purpose.

Article IV: Sale of Liquor

Section 4.1 License Required. No sales of alcoholic beverages shall be made on or within the exterior boundaries of the Tribe's trust lands as defined in this Ordinance, except at a business duly licensed by the Tribal Council.

Section 4.2 Sales for Cash. All liquor sales on the Tribe's trust lands shall be on a cash only basis, and no credit shall be extended to any person, organization or entity in connection with any such sales, except that this provision does not prevent the payment for purchases with the use of cashiers' or personal checks, money orders, payroll checks, or debit cards or credit cards issued by any federally-or state-regulated financial institution.

Section 4.3 Sales for Personal Consumption. Except as may be specifically licensed by the Tribal Council, all retail sales of liquor shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of tribal trust lands is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of tribal trust lands and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal trust lands or liability for money damages of up to five hundred dollars ($500), or both, as determined by the Tribal Council after giving the alleged violator due notice and an opportunity to be heard concerning the fact of the alleged violation and the appropriateness of any penalty.

Article V: Licensing

Section 5.1 Procedure. In order to control the proliferation of establishments on tribal trust lands that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of tribal trust lands or on other Tribal Land must apply to the Tribal Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor for non-commercial purposes within a private single-family residence on tribal trust lands for which no money is requested or paid.

Section 5.2 State Licensing. No person shall be allowed or permitted to sell or provide liquor on tribal trust lands if s/he does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the Tribal license shall automatically be revoked or suspended as well.

Section 5.3 Application. Any person applying for a license to sell or provide liquor on tribal trust lands shall complete and submit an application provided for this purpose by the Tribal Council, and pay such application fee as may be set from time to time by the Tribal Council for this purpose. Incomplete applications will not be considered.

Section 5.4 Issuance of License. The Tribal Council may issue a license if it believes that the issuance of such license would be in the best interest of the Tribe, the residents of tribal trust lands and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Council.

Section 5.5 Duration of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5.6 Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Tribe.

Section 5.7 Suspension or Revocation of License. The Tribal Council may suspend or revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked. The licensee shall have the burden of going forward and proving by a preponderance of the evidence that the Tribal Council should not suspend or revoke the license.

Section 5.8 Transferability of Licenses. Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the persons or entities in whose name issued.

Article VI: Taxes

Section 6.1 Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on tribal trust lands in the amount of one percent (1%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on tribal trust lands, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 6.2 Payment of Taxes to the Tribe. All taxes from the sale of alcoholic beverages to tribal trust lands shall be paid over to the General Treasury of the Tribe and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Council and administration of this Ordinance.

Section 6.3 Taxes Due. All taxes upon the sale of alcoholic beverages on tribal trust lands are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at 1.5% per month, or eighteen percent (18%) per annum.

Section 6.4 Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 6.5 Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on tribal trust lands. Said review or audit may be done periodically by the Tribal Council through its agents or employees whenever in the discretion of the Tribal Council such a review is necessary to verify the accuracy of reports.

Article VII: Rules, Regulations and Enforcement

Section 7.1 In any proceeding under this title, proof by a preponderance of the evidence of one unlawful sale or distribution of liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this title.

Section 7.2 Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a license required by this Ordinance, shall be guilty of a violation of this Ordinance and subject to civil damages assessed by the Tribal Council. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Tribe for their personal or other non-commercial use, and the non-commercial possession, transportation, sale, consumption or other disposition of liquor in locations on tribal trust lands other than ''public places'' as defined herein shall be governed solely by the laws of the State of California.

Section 7.3 Any person within the boundaries of tribal trust lands who, in a public place, buys liquor from any person or entity other than at a properly-licensed facility and in accordance with this Ordinance shall be guilty of a violation of this Ordinance.

Section 7.4 Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 7.5 No person under the age of twenty-one (21) years shall consume, acquire

or have in his/her possession any alcoholic beverages. Any person violating this Section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink or container of alcoholic beverages so consumed, acquired or possessed.

Section 7.6 Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7.7 Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe up to five hundred dollars ($500) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given due notice and an opportunity to respond to such allegations.

Section 7.8 Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27) years, the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(a) Driver's license of any state or identification card issued by any state Department of Motor Vehicles;

(b) United States Active Duty Military;

(c) Passport; or,

(d) Gaming license, work permit or other identification issued by the Tribal Council, if said license, permit or identification contains the bearer's correct age, signature and photograph.

Article VIII: Abatement

Section 8.1 Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 8.2 The Tribal Chairperson, upon authorization by a majority of the Tribal Council, or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall direct the tribal department of public safety or equivalent department of the tribal government to abate any such nuisance. If necessary, the Tribal Council shall be authorized to institute and maintain an action in a court of competent jurisdiction in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than twenty-five thousand dollars ($25,000) payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of therein in violation of the provision of this Ordinance or of any other applicable tribal law, and that she will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance or other Tribal laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Tribe.

Section 8.3 In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought in a court of competent jurisdiction to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance. Unless a tribal court has been established or designated by contract at the time any such action is to be filed, the Tribal Council shall sit as the tribal court for the purpose of ordering the abatement of such nuisance.

Article IX: Profits

Section 9.1 The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on tribal trust lands, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and,

(b) Second, the remainder shall be turned over to the General Fund of the Tribe and expended by the Tribal Council for governmental services and programs on tribal trust lands.

Article X: Severability and Effective Date

Section 10.1 If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 10.2 This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3 Any and all prior enactments of the Tribe that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 10.4 All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161, but only to the extent required by the laws of the United States.

Article XI: Amendment

This Ordinance may only be amended by majority vote of more than 50% of the Tribal Council attending a duly noticed meeting at which a quorum is present.

Article XII: Certification and Effective Date

This is to certify that the Bear River Band of Rohnerville Rancheria Tribal Council adopted the foregoing Ordinance at a duly held, noticed and convened meeting on June 30, 2004 of the Tribal Council at which a quorum of at least three (3) members were present by a vote of 4 in Favor, 0 Opposed, 0 Abstaining and 0 Absent as attested to and certified by the Tribal Chairman and Tribal Secretary, and shall be effective upon approval by the Secretary of the Interior or his designee as provided by federal law. Attested by:

_____

(Leonard Bowman, Tribal Council Chairperson)
Date

_____

(Aileen Meyer, Tribal Council Secretary) (Date)

[FR Doc. 05–4560 Filed 3–8–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–05–1040–PH–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) 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's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet March 23, 2005, in Salt Lake City, Utah. The RAC will meet in the Broadway Conference Room at the Peery Hotel which is located at 110 West Broadway (300 South), Salt Lake City, Utah. A half-hour public comment period is scheduled to begin at 3:45 p.m. Written comments may be sent to the Bureau of Land Management address listed below.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The RAC will be discussing their role in the process of reviewing future Resource Management Plans (RMP); improving RMP communications; listening to various presentations from the Natural Resources Committee, Utah's Lands Policy Group, and an overview of Richfield Field Office's RMP.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: March 2, 2005.

Sally Wisely,

State Director.

[FR Doc. 05–4639 Filed 3–8–05; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–101 (Second Review)]

Greige Polyester/Cotton Printcloth From China

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject review.

EFFECTIVE DATE: March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202) 205–2501, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 25, 2004, the Commission established a schedule for the conduct of the subject review (69 FR 53465, September 1, 2004), and revised its schedule on January 28, 2005 (70 FR 6036, February 4, 2005). The Commission is again revising its schedule; the Commission's hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 5, 2005, and the deadline for filing posthearing briefs is April 12, 2005. The Commission's schedule in this review is otherwise unchanged. No party has objected to the Commission's schedule, as revised.

For further information concerning this review, see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 3, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–4571 Filed 3–8–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–460]

Certain Sortation Systems, Parts Thereof, and Products Containing Same; Notice of Commission Determination To Rescind a Limited Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind the limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Rapistan Systems Advertising Corp. and Siemens Dematic Corp., both of Grand Rapids, Michigan. 66 FR 38741 (July 25, 2001). The complaint named Vanderlande Industries Nederland BV of the Netherlands, and Vanderlande Industries of Atlanta, Georgia (collectively ''Vanderlande'') as respondents.

Complainants alleged that Vanderlande had violated section 337 by importing into the United States, selling for importation, and selling within the United States after importation certain sortation systems, or components thereof, covered by independent claims 1, 13, 23, 30, and 42 and dependent claims 2–4, 8, 9, 17, 18, 20, 22, 24, 27, 29, 33, 35–37, 39, 43, 45–47, and 49 of U.S. Patent No. 5,127, 510 (''the '510 patent''), owned by Rapistan Systems and exclusively licensed to Siemens Dematic. On April 5, 2002, complainants filed an unopposed motion asking for the termination of the investigation with respect to claims 2, 3, 8, 9, 18, 24, 36, 37, 29, 46, 47, and 49. On May 16, 2002, the presiding administrative law judge (ALJ) granted the motion in an ID (Order No. 32) and the Commission determined not to review the ID. The claims of the '510 patent at issue were therefore claims 1, 4, 13, 17, 20, 22, 23, 27, 29, 30, 33, 35, 42, 43, and 45. The complaint further alleged that an industry in the United States exists, as required by subsection (a)(2) of section 337.

On October 22, 2002, the ALJ issued his final initial determination (ID) on violation and his recommended determination on remedy. The ALJ found a violation of section 337 by reason of infringement of claims 1 and 4 of the '510 patent. He also found that the '510 patent is not invalid or unenforceable. With respect to remedy, the ALJ recommended issuance of a limited exclusion order barring importation of the respondents' accused Mark 2 Posisorter sortation system and its parts and components. On November 4, 2002, Vanderlande and the Commission investigative attorney (IA) petitioned for review of portions of the ALJ's final ID. Rapistan submitted a contingent petition for review asking that the Commission review certain issues if it decided to review the ID. All parties filed responses to the petitions on November 12, 2002.

On December 10, 2002, the Commission determined to review the ID and requested submissions regarding the issues under review as well as

remedy, the public interest and bonding. On January 27, 2003, the Commission issued a notice indicating that it had determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, and had issued a limited exclusion order prohibiting the importation of the infringing sortation systems, parts and components thereof, manufactured abroad by Vanderlande. The Federal Circuit affirmed the Commission's determination on May 3, 2004. *See Vanderlande Indus.* v. *Int'l Trade Comm'n,* 366 F.3d 1311 (Fed. Cir. 2004).

On February 2, 2005, Vanderlande and complainants filed a joint petition to rescind the remedial order under Commission Rule 210.76(a)(1) on the basis of a settlement agreement between the parties. The parties asserted that their settlement agreement constituted ''changed conditions of fact or law'' sufficient to justify rescission of the order under Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1). The IA filed a response in support of the motion on February 14, 2005.

Having reviewed the parties' submissions, the Commission has determined that the settlement agreement satisfies the requirement of Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1), that there be changed conditions of fact or law. The Commission therefore has issued an order rescinding the limited exclusion order previously issued in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.76(a)(1)).

Issued: March 3, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–4570 Filed 3–8–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 17N; ATF O 1150.13]

Delegation Order—Designation of Acting Supervisory Officials

1. *Purpose.* The purpose of this delegation order is to grant supervisors authority to designate acting supervisory officials of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

2. *Cancellations.* ATF O 1100.9A, Delegation Order—Designation of Acting Supervisory Officials dated October 7, 1980 and ATF F 1100.1, Temporary Assignment Designation.

3. *Authorities.* Pursuant to authorities vested in the Director, ATF, by Title 6 U.S.C. 531 and 28 CFR O.130–0.133.

4. *Designations.*

a. An official e-mail notification is required for supervisors to designate a subordinate employee to act in the event of their absence or in a subordinate supervisory position in which such position becomes vacant. At a minimum, the official e-mail notification must be sent to individuals who report directly to the supervisor; the individual to whom the supervisor reports; and any other individual(s) who need to be advised. An official e-mail notification is not required if there exists a document or order that designates a temporary acting official.

b. In the event of an emergency, ATF O 1100.59G, Delegation Order—Emergency Order of Succession and Delegation of Authority, designates the order of succession for Acting Director to ensure the continuity of Bureau functions. Under these circumstances no e-mail notification is required.

5. *Retention Requirements.* Acting designations must be retained in accordance with ATF O 1345.1, Records Management Program and Records Control Schedule 101, item 2 (Headquarters) and ATF Records Control Schedule 201, item 1 (Field).

6. *Redelegation.* The authority to designate acting supervisory officials is delegated to all Bureau personnel in supervisory positions and may not be redelegated.

7. *Questions.* Questions regarding this delegation order may be addressed to the Chief, Document Services Branch at (202) 927–8930.

Dated: February 18, 2005.

Carl J. Truscott,

Director.

[FR Doc. 05–4606 Filed 3–8–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

RAM, INC. d/b/a American Wholesale Distribution Corp.; Denial of Registration

On July 23, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to RAM Inc., d/b/a American Wholesale Distribution Corporation (RAM), proposing to deny its June 5, 2003, application for DEA Certificate of Registration as a distributor of List I chemicals. The Order to Show Cause alleged that granting RAM's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The order also notified RAM that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to RAM at its proposed registered location at 3300 Pleasant Valley Lane, Suite C, Arlington, Texas 76015. It was received on August 2, 2004, and DEA has not received a request for a hearing or any other reply from RAM or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that RAM has waived its hearing right. *See* Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1300.02(a). Pseudoephedrine and ephedrine are List I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g.*, Direct Wholesale, 69 FR 11654 (2004); Branex, Inc., 69 FR 8682 (2004); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9997 (2002); Denver Wholesale, 67 FR 99986 (2002).

The Deputy Administrator's review of the investigative file reveals that RAM's owner and only officer is Mr. Mohamad Khorchid. On or about June 5, 2003, an application was submitted by Mr. Khorchid on behalf of RAM, seeking registration to distribute ephedrine and pseudoephedrine List I chemical products. It identified the applicant as ''RAM INC American Wholesale Dist. Co.''

Prior to RAM's February 7, 2003, incorporation, Mr. Khorchid and his wife owned and operated American

Wholesale Distribution Corporation (AWD), also of Arlington, Texas, which was registered as a distributor of List I chemical products on April 15, 1999, under DEA Certificate of Registration 004169ASY.

During AWD's 1999 pre-registration inspection, DEA investigators discussed requirements for recordkeeping and suspicious order reporting with Mr. and Mrs. Khorchid and provided written information regarding combination ephedrine and pseudoephedrine drug products used in illicitly manufacturing methamphetamine. A juvenile employee of AWD [John Doe] was present at this meeting and the three were advised it was illegal to sell List I chemical products knowing they would be used to manufacture illegal drugs. During this conversation, Mr. Khorchid advised investigators that AWD sold sundry items to area convenience stores and that List I chemical products would make up about 15% of the company's total sales.

During a July 2001 regulatory investigation, Mr. Khorchid advised DEA investigators that 99% of AWD's customers were convenience stores and that List I chemical products made up about 10% of its sales. An inventory conducted as a part of that investigation showed AWD maintained a substantial inventory of ephedrine and pseudoephedrine products manufactured or distributed by two companies, Lannett Company, Inc. (Lannett) and PDK Labs, Inc. (PDK). The inventory included several Max Brand products, which are manufactured by PDK.

DEA is aware that Lannett and PDK's ephedrine and pseudoephedrine products have been discovered by law enforcement agencies at clandestine methamphetamine laboratories and other illicit sites throughout the country. *See* Indace, Inc, c/o Seegott, Inc; Malladi, Inc., (Indace), 69 FR 67951 (2004) (Suspension of Shipment of ephedrine hydrochloride being imported for distribution to PDK Labs, Inc.). Further, during this period, no other ephedrine and pseudoephedrine manufacturers had as much diversion of their products as Lannett and PDK. DEA has previously found that PDK's Max Brand products are the precursors ''predominantly encountered and seized at clandestine methamphetamine laboratories'' and that ''[c]onvenience stores are also the primary source for the purchase of the Max Brand products, which are the preferred brand for use by illicit methamphetamine producers, and users.'' *See* Express Wholesale, 69 FR 62086, 62087, 62089 (2004).

In April 2002, DEA investigators received information that AWD employee John Doe, who had a close personal relationship with the Khorchids, was falsifying company invoices to account for unlawful sales of pseudoephedrine. On June 11, 2002, an undercover operation was conducted which resulted in Doe selling a case of Action Brand PSE and four dozen bottles of Max Brand PSE to an undercover agent for about $1600.00, believing the products would be used to manufacture methamphetamine.

In July 2002, Diversion Investigators obtained Mr. Khorchid's consent to perform an administrative inspection of AWD. A review of the company's sales records from April 2001 through July 2002 showed AWD sold large amounts of Lannet and PDK pseudoephedrine and ephedrine products to numerous area convenience stores. In many instances, the purchases of these products were well in excess of any potential legitimate demand. *See* Branex, Inc., *supra,* 69 FR at 8693 (expert testimony on the legitimacy of selling listed chemical products in the ''gray market''); Xtreme Enterprises, Inc., 67 FR 76195, 76197 (2002) (same); Value Wholesale, 69 FR 58548 (2004); *see also* Indace, *supra,* 69 FR at 67962 and cases cited therein.

On July 30, 2002, investigators informed Mr. Khorchid about the investigation involving John Doe and requested surrender of the company's DEA registration, which was done on October 1, 2002. The employee was subsequently prosecuted in state juvenile court and pled guilty to conspiring to manufacture a controlled substance (methamphetamine).

During DEA's pre-registration investigation into RAM's pending application, Mr. Khorchid advised investigators that the new company's prospective customers would continue to be convenience stores and he also intended to sell PDK manufactured pseudoephedrine and ephedrine products.

DEA is aware that small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire product from multiple distributors to mask their acquisition of large amounts of listed chemicals. In addition, some individuals utilize sham corporations of fraudulent records to establish a commercial identity in order to acquire listed chemicals.

DEA knows by experience that there exists a gray market in which certain high strength, high quantity pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion. These gray market products are not sold in large discount stores, retail pharmacies or grocery stores, where sales of therapeutic over-the-counter drugs predominate.

DEA also knows from industry data, market studies and statistical analysis that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and ''big box'' discount retailers. Less than one percent of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than $20.00 to $40.00 worth of products containing pseudoephedrine per month. The expected sales of ephedrine products are known to be even smaller. Furthermore, convenience stores handling gray market products often order more product than what is required for the legitimate market and obtain chemical products from multiple distributors. *See* CWK Enterprises, Inc., 69 FR 69400 (2004); Prachi Enterprises, Inc., 69 FR 69407 (2004); Volusia Wholesale, 69 FR 69409; Branex, Inc., *supra*, 69 FR at 8693.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.,* Energy

Outlet, 64 FR 14269 (1999). *See also,* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors one, two, three, four and five relevant to the pending application for registration.

As to factors one through four, RAM's owners and operators have a history of distributing List I chemical products which were then diverted while the company operated as AWD and an employee with a close relationship to the Khorchids, sold listed products to an undercover officer believing they would be used to manufacture methamphetamine. That employee was subsequently convicted of a state crime involving controlled substances. As a result of these activities, Mr. Khorchid surrendered AWD's registration and incorporated RAM only a few months later. That company now seeks to sell listed products to the gray market, including those manufactured by PDK Labs, just as it did when operating solely under the AWD name. These four factors weigh against granting the pending application.

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor also weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States, including Texas. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the gray market for List I chemical products. It is apparent that Mr. Khorchid intends on again becoming a participant in this market, just as he did when registered under AWD's identity.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products. *See, e.g.,* ANM Wholesale, 69 FR 11652 (2004); Xtreme Enterprises, Inc., *supra,* 67 FR 76195; Sinbad Distributing, 67 FR 10232 (2002); K.V.M. Enterprises, 67 FR 70968 (2202).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, ''[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the gray market, in which large mounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., *supra,* 67 FR at 76197. As in Xtreme Enterprises, Inc., Mr. Khorchid's personal lack of a criminal record, his discharge of former-AWD employee John Doe and purported intent to comply with the law and regulations, are far outweighed by his intent to sell pseudoephedrine products almost exclusively to the gray market.

The Deputy Administrator is particularly troubled by AWD's history, indicating its owners and operators, now principals of RAM, cannot be trusted to handle the responsibilities of a registrant. Further, RAM's continued use of AWD's name in a d/b/a capacity, raises further questions about RAM's customer base and the risk that its products will be sold to previous customers of AWD and then diverted to illegal purposes.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, submitted by RAM, Inc. d/b/a American Wholesale Distribution Corporation, be, and it hereby is, denied. This order is effective April 8, 2005.

Dated: January 14, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–4565 Filed 3–8–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mario Avello, M.D.; Revocation of Registration

On May 17, 2004, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Mario Avello, M.D. (Dr. Avello) of Coral Gables, Florida. Dr. Avello was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AA0105747, as a practitioner, and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) for reason that his continued registration would be inconsistent with the public interest. Dr. Avello was further notified that his DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension alleged in sum, that Dr. Avello was engaged in illegally prescribing controlled substances as part of a scheme in which controlled substances were dispensed by pharmacies, based on Internet prescriptions issued by Dr. Avello and associated physicians, based solely on their review on Internet questionnaires and without personal contact, examination or bona fide physician/patient relationships. Such prescriptions were not issued ''in the usual course of professional treatment'' and violated 21 CFR 1306.04 and 21 U.S.C. 841(a). This action was part of a nationwide enforcement operation by DEA titled Operation Pharmnet, which targeted online suppliers of prescription drugs, including owners, operators, pharmacists and doctors, who have illegally and unethically been marketing controlled substances via the Internet.

According to the investigative file, the Order to Show Cause and Immediate Suspension of Registration was personally served upon Dr. Avello by DEA Diversion Investigators on May 20, 2004. More than thirty days have passed since the Order to Show Cause and Immediate Suspension of Registration was served and DEA has not received a request for hearing or any other reply from Dr. Avello or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause and Immediate Suspension of Registration to Dr. Avello, and (2) no request for hearing having been received, concludes that Dr. Avello is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Avello is currently registered with DEA as a practitioner under DEA Registration, AA0105747 for Schedule II through V Controlled Substances. That registration expires on June 30, 2006. His registered address is 363 Aragon

Avenue, Apartment 413, Coral Gables, Florida 33134. However, information obtained from the Florida Power & Light Company indicates that someone other than Dr. Avello has been paying the utility bills for that apartment since September 2003, and that Dr. Avello has been paying the utility bills for another apartment in the same building, Apartment No. 711, since March 2003.

In September 2003, DEA investigators executed a federal search warrant on a pharmacy in Iowa and seized multiple prescriptions that had been issued by Dr. Avello pursuant to his relationship with Pharmacon International, L.L.C. (Pharmacon), an Internet drug company which was doing business on *http://WWW.Buymeds.com* and other affiliated Web sites.

Customers would access a Pharmacon Web site and complete on-line questionnaires asking some medical history questions and soliciting information as to what drug they were seeking and the method of payment. The questionnaire would be electronically forwarded to Dr. Avello and, based on the answers to the questionnaire, he would issue prescriptions for the desired controlled substances. The primary drug prescribed pursuant to this scheme was hydrocodone, a Schedule III controlled substance.

Dr. Avello did not see the customers and had no prior doctor-patient relationships with them. He did not conduct physical examinations, nor did he create or maintain patient records. The only information usually reviewed prior to issuing prescriptions was the customer's questionnaire and Dr. Avello did not consult with the primary care physicians.

The Iowa Board of Pharmacy contacted over 400 listed customers of Buymeds.com to verify purported prescriptions. Approximately half of these people advised they never had any contact with the prescribing physician or filling pharmacy. They stated their only contact with Buymeds.com had been through the Internet Web site, where they filled out the brief questionnaire, indicated the form of payment and requested their drugs of choice. None of the individual customers had any personal contact with the prescribing physicians and many prescriptions had been issued to minors.

Approximately 40 individuals were contacted by the Iowa Board who had received controlled substances from Buymeds.com that had been prescribed by Dr. Avello. Every customer stated that before receiving their controlled substances they had no personal contact with Dr. Avello, except by e-mail.

Dr. Avello, who entered into a ''Professional Services Agreement'' with Pharmacon on May 5, 2003, received payment for each questionnaire reviewed and he admitted reviewing approximately 100 to 200 requests for prescriptions per day. Dr. Avello's son, Alexis M. Avello, was an officer of Pharmacon and a signator on the company's contract with Dr. Avello.

The Controlled Substances Act (CSA) establishes a ''closed system'' of distribution that regulates the movement of controlled substance prescription medications from importation or manufacture through their delivery to the ultimate user patient via the dispensing, administering or prescribing, pursuant to the lawful order of a practitioner. The regulations implementing the CSA explicitly describe the parameters of a lawful prescription as follows: ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Prescriptions issued not in the ''usual course of professional treatment'' are not ''prescriptions'' for purposes of the CSA and individuals issuing and filling such purported prescriptions are subject to the penalties for violating the CSA's controlled substances provisions.

In *United States* v. *Moore,* 423 U.S. 122 (1975), the Supreme Court held that, ''Implicit in the registration of a physician is the understanding that he is authorized only to act 'as a physician'.'' *Id.,* at 141. In Moore the court implicitly approved a jury instruction that acting ''as a physician'' is acting ''in the usual course of a professional practice and in accordance with a standard of medical practice generally recognized and accepted in the United States.'' *Id.,* at 138–139; *see, United States* v. *Norris,* 780 F.2d 1207, 1209 (5th Cir. 1986).

Responsible professional organizations have issued guidance in this area. The American Medical Association's guidance for physicians on the appropriate use of the Internet in prescribing medication (H–120.949 Guidance for Physicians on Internet Prescribing) states:

> ''Physicians who prescribe medications via the Internet shall establish, or have established, a valid patient-physician relationship, including, but not limited to, the following components. The physician shall:
>
> i. obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided;
>
> ii. have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s);
>
> iii. as appropriate, follow up with the patient to assess the therapeutic outcome;
>
> iv. maintain a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to his or her other health care professionals; and
>
> v. include the electronic prescription information as part of the patient medical record.''

In April 2000, the Federation of State Medical Boards adopted Model Guidelines for the Appropriate use of the Internet in Medical Practice, which state, in pertinent part, that:

> ''Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptance standard of care.''

The CSA regulations establish certain responsibilities not only on individual practitioners who issue prescriptions for controlled substances, but also on pharmacists who fill them. A pharmacist's ''corresponding responsibility'' regarding the proper dispensing of controlled substances is explicitly described in 21 CFR 1306.04(a). It provides:

> ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.''

In an April 21, 2001, policy statement, entitled *Dispensing and Purchasing Controlled Substances Over the Internet,* 66 FR 21,181 (2001), DEA delineated certain circumstances in which prescribing over the Internet is unlawful. The policy provides, inter alia, that a controlled substance should not be issued or dispensed unless there was a bona fide doctor/patient relationship. Such a relationship required that the patient has a medical complaint, a medical history be taken, a physical examination performed, and some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed. The policy

statement specifically explained that the completion of ''a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship * * *'' *Id.*, at 21,182–83.

Rogue Internet pharmacies bypass a legitimate doctor-patient relationship, usually by use of a cursory and incomplete online questionnaire or perfunctory telephone ''consult'' with a doctor, who usually has a contractual arrangement with the online pharmacy and is often paid on the basis of prescriptions issued. The Food and Drug Administration (FDA) considers the questionnaire, in lieu of face-to-face interaction, to be a practice that undermines safeguards of direct medical supervision and amounts to substandard medical care. *See* U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs (*http://fda.gov/oc/buyonline/default.htm*).

The National Association of Boards of Pharmacy considers internet pharmacies to be suspect if:

> ''They dispense prescription medications without requiring the consumer to mail in a prescription, and if they dispense prescription medications and do not contact the patient's prescriber to obtain a valid verbal prescription. Further, online pharmacies are suspect if they dispense prescription medications solely based upon the consumer completing an online questionnaire without the consumer having a pre-existing relationship with a prescriber and the benefit of an in-person physical examination. State boards of pharmacy, boards of medicine, the FDA, as well as the AMA, condemn this practice and consider it to be unprofessional.''

See, National Association of Boards of Pharmacy, VIIPS Program, Most Frequently Asked Questions (*http://www.nabp.net/vipps/consumer/faq.asp).*

Rogue Internet pharmacies often use persons with limited or no knowledge of medications and standard pharmacy practices to fill prescriptions, do not advertise the availability of pharmacists for medication consultation, and focus on select medications, usually lifestyle, obesity and pain medications. Rogue Internet pharmacies generally do not protect the integrity of original faxed prescriptions by requiring that they be received directly from the prescriber (not the patient) and do not verify the authenticity of suspect prescriptions.

When the established safeguards of an authentic doctor-patient relationship are lacking, controlled substance prescription drugs can not only be misused, but also present potentially serious health risks to patients. Rogue Internet pharmacies facilitate the easy circumvention of legitimate medical practice. The FDA has stated:

> ''We know that adverse events are under-reported and we know from history that tolerating the sale of unproven, fraudulent, or adulterated drugs results in harm to the public health. It is reasonable to expect that the illegal sales of drugs over the Internet and the number of resulting injuries will increase as sales on the Internet grow. Without clear and effective law enforcement, violators will have no reason to stop their illegal practices. Unless we begin to act now, unlawful conduct and the resulting harm to consumers most likely will increase.''

See U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs *(http://fda.gov/oc/buyonline/default.htm).*

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

In this case, the Deputy Administrator finds factors two, four and five relevant to a determination of whether Dr. Avello's continued registration remains consistent with the public interest.

With regard to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file that Dr. Avello has been the subject of a state disciplinary proceeding, nor is there evidence demonstrating that his state medical license or state controlled substance authority are currently restricted in any form. Nevertheless, state licensure is a necessary, but not sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g.,* Wesley G. Harline, M.D., 65 FR 5,665–01 (2000); James C. LaJevic, D.M.D., 64 FR 55,962 (1999).

With regard to factors two and four, the Deputy Administrator finds that the primary conduct at issue in this proceeding (*i.e.,* the unlawful prescribing and dispensing of controlled substance prescriptions for use by Internet customers) relates to Dr. Avello's experience in prescribing controlled substances, as well as his compliance with applicable State, Federal, or local laws relating to controlled substances.

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. *See* Mark Wade, M.D., 69 FR 7018 (2004). Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. *See* Floyd A. Santner, M.D., 55 FR 37581 (1990).

The Deputy Administrator concludes from a review of the record that Dr. Avello did not establish valid physician-patient relationships with the Internet customers to whom he prescribed controlled substances. DEA has previously found that prescriptions issued through pharmacy Internet websites under these circumstances are not considered as having been issued in the usual course of medical practice, in violation of 21 CFR 1306.04 and has revoked DEA registrations of several physicians for participating in Internet prescribing schemes similar to or identical to that of Dr. Avello and Pharmacon. *See,* Marvin L. Gibbs, Jr., M.D., 69 FR 11,658 (2004); Mark Wade, M.D., *supra,* 69 FR 7,018; Ernesto A. Cantu, M.D., 69 FR 7,014–02 (2004); Rick Joe Nelson, M.D., 66 FR 30,752 (2001).

Similarly, DEA has issued orders to show cause and subsequently revoked DEA registrations of pharmacies which have failed to fulfill their corresponding responsibilities in Internet prescribing operations similar to, or identical to that of Dr. Avello and Pharmacon. *See,* EZRX, L.L.C. (EZRX), 69 FR 63,178

(2004); Prescriptionline.com, 69 FR 5,583 (2004).

In the instant case, Dr. Avello and other physicians associated with the Internet scheme, authorized prescriptions for controlled substances without the benefit of face-to-face physician-patient contact, physical exam or medical tests. Beyond occasional phone calls to some customers or their family members, there is no information in the investigative file demonstrating that Dr. Avello and other issuing physicians associated with Pharmacon even took time to corroborate response to questionnaires submitted by the customers. Here, it is clear the issuance of controlled substance prescriptions to persons whom Dr. Avello had not established a valid physician-patient relationship is a radical departure from the normal course of professional practice and he knowingly participated in this scheme.

With regard to factor three, Dr. Avello's conviction record under Federal or State laws relating to the dispensing of controlled substances, the record does not reflect that he has been convicted of a crime related to controlled substances.

Regarding factor five, such other conduct which may threaten the public health or safety, the Deputy Administrator finds this factor relevant to Dr. Avello's continued prescribing to Internet customers after issuance of policy statements designed to assist licensed practitioners and pharmacists in the proper prescribing and dispensing of dangerous controlled drugs.

The Deputy Administrator has previously expressed her deep concern about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States. *See,* EZRX, *supra,* 69 FR at 63181; Mark Wade, M.D., *supra,* 69 FR 7018.

The Deputy Administrator has also previously found that in a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing prescription drugs. That accounts for 2% to 4% of the population—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood altering drugs—accounts for one-third of all illicit drug use in the United States. *See* EZRX, *supra*, 69 FR at 63181–82, Mark Wade, M.D., *supra*, 679 FR 7018.

The Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes Dr. Avello's practice of issuing prescriptions for controlled substances to indistinct Internet customers which are then filled by pharmacies participating in the scheme. Such conduct contributes to the abuse of controlled substances by Dr. Avello and Pharmacon's customers and is relevant under factor five, further supporting revocation of his DEA Certificate of Registration.

Motivated purely by profit and in pursuit of financial gain, Dr. Avello has demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of individuals who purchased dangerous drugs through the Internet. Such demonstrated lack of character and adherence to the responsibilities inherent in a DEA registration show in no uncertain terms that Dr. Avello's continued registration with DEA would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AA0105747, issued to Mario Avello, M.D., be, and is hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are denied. This order is effective April 8, 2005.

Dated: January 14, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–4563 Filed 3–8–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Samuel Lee Steel, M.D.; Revocation of Registration

On August 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel Lee Steel, M.D. (Dr. Steel) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS5024865, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications under 21 U.S.C. 823(f), on the ground that he lacked state authority to handle controlled substances in the State of California. The Order to Show Cause also notified Dr. Steel that should no request for a hearing be filed with 30 days, his hearing right would be deemed waived.

The order to Show Cause was sent by certified mail to Dr. Steel at his registered address of 1150 North Canyon Drive, Palm Springs, California 92263. According to the return receipt of the Order, it was accepted on Dr. Steel's behalf on September 1, 2004. DEA has not received a request for hearing or any other reply from Dr. Steel or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record and (2) no request for hearing having been received, concludes that Dr. Steel is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Steel is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V under Certificate of Registration BS5024865, expiring on February 29, 2005. According to information in the investigative file, following an Interim Order of Suspension, on April 1, 2004, the Medical Board of California (Board)

revoked Dr. Steel's Physician and Surgeon's Certificate, effective as of May 3, 2004. The revocation was based on the Board's finding that Dr. Steel was mentally impaired to a degree that he was unable to safely practice medicine.

There is no evidence before the Deputy Administrator to rebut a finding that Dr. Steel's California medical license has been revoked. Therefore, the Deputy Administrator finds Dr. Steel is currently not authorized to practice medicine in the State of California. As a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substance Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 68 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Steel's state medical license was revoked after being initially suspended and there is no information before the Deputy Administrator which points to that revocation having been lifted or stayed. As a result, Dr. Steel is not authorized to practice medicine or handle controlled substances in California, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BS5024865, issued to Samuel Lee Steel, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and hereby are, denied. This order is effective April 8, 2005.

Dated: January 14, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–4564 Filed 3–8–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Consent To Receive Employee Benefit Plan Disclosure Electronically

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of an information collection request (ICR) incorporated in the Final Rules relating to the use of electronic communication and recordkeeping technologies by employee pension and welfare benefit plans (29 CFR 2520.104b–1).

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before May 9, 2005.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, Fax (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Department established a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may use electronic media to satisfy disclosure obligations under Title I of ERISA (29 CFR 2520.104b–1). Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, has affirmatively consented to receive disclosure documents. Prior to consenting, the participant or beneficiary must also be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply, that consent may be withdrawn at any time, procedures for withdrawing consent and updating necessary information, the right to obtain a paper copy, and any hardware and software requirements. In the event of a hardware or software change that creates a material risk that the individual will be unable to access or retain documents that were the subject of the initial consent, the individual must be provided with information concerning the revised hardware or software, and an opportunity to withdraw a prior consent.

II. Review Focus

The Department of Labor (Department) 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 Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on May 31, 2005. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Consent to Receive Employee Benefit Plan Disclosure Electronically.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0121.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 1000.

Responses: 1000.

Average Response time: 2 hours.

Estimated Total Burden Hours: 100.

Dated: March 3, 2005.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 05–4566 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,030]

Arista Beaver Brook Circuits Bethel, CT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Arista Beaver Brook Circuits, Bethel, Connecticut. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,030; Arista Beaver Brook Circuits, Bethel, Connecticut (February 2, 2005)

Signed at Washington, DC this 16th day of February 2005.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–985 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,518]

BASF Corporation Freeport, TX; Notice of Revised Determination on Reconsideration

On January 12, 2005, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to the subject firm. The Notice will soon be published in the **Federal Register**.

The initial investigation found that workers are separately identifiable by product line (polycaprolactum, oxo, diols, and acrylic monomers), that polycaprolactum, oxo and diol production increased during the relevant period, and that the subject company neither increased imports of acrylic monomers during the relevant period nor shifted acrylic monomer production abroad.

The petitioner asserted in the request for reconsideration that the worker separations at the subject firm were the result of a shift of production of acrylic monomers to China.

During the reconsideration investigation, it was found that workers are not separately identifiable by product line, subject facility production ceased in December 2003, production shifted to an affiliated facility located in Europe, and the subject firm increased their reliance on imports during the relevant period.

The investigation also revealed that the criteria for alternative trade adjustment assistance have been met. A significant number or proportion of the worker group are age fifty years or over and workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at BASF Corporation, Freeport, Texas contributed importantly to worker separations at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of BASF Corporation, Freeport, Texas, who became totally or partially separated from employment on or after August 30, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 21st day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–990 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,754A, TA–W–55,754B, TA–W–55,754C, TA–W–55,754D]

Dan River, Inc., 1325 Avenue of the Americas, New York, NY; Dan River, Inc., Boonsville, MI; Dan River, Inc., High Point, NC; Dan River, Inc., Walnut Creek, CA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 5, 2004, applicable to Dan River, Inc., 1325 Avenue of the Americas, New York, New York. The notice was published in the **Federal Register** on December 9, 2004 (69 FR 71429).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information provided by the firm shows that some employees separated from employment with Dan River, Inc., 1325 Avenue of the Americas, New York, New York, were located in Boonsville, Mississippi, High Point, North Carolina and Walnut Creek, California. These workers provided sales and marketing support services for the production of home furnishing textiles produced by Dan River, Inc.

Based on these findings, the Department is amending this certification to include employees of the 1325 Avenue of the Americas, New York, New York location of Dan River, Inc., located in Boonsville, Mississippi, High Point, North Carolina, and Walnut Creek, California.

The intent of the Department's certification is to include all workers of Dan River, Inc. who were adversely affected by a shift in production to China and Mexico.

The amended notice applicable to TA–W–55,754 is hereby issued as follows:

All workers of Dan River, Inc., 1325 Avenue of the Americas, New York, New York (TA–W–55,754A), including employees of Dan River, Inc., 1325 Avenue of The Americas, New York, New York, located in Boonsville, Mississippi (TA–W–55,754B), Dan River, Inc., High Point, North Carolina (TA–W–55,754C), and Dan River, Inc., Walnut Creek, California (TA–W–55,754D), who became totally or partially separated from employment on or after October 8, 2003, through November 5, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of February 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–989 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,820]

Thermal and Interior Vandalia Operations of Delphi Corporation, Vandalia, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Thermal and Interior, Vandalia Operations of Delphi Corporation, Vandalia, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,820; Thermal and Interior, Vandalia Operations of Delphi Corporation, Vandalia, Ohio (January 31, 2005)

Signed at Washington, DC this 1st day of March 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–981 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,935]

Dhs Veneer, Subsidiary of Faces by Bacon, Inc., Thomasville, NC; Notice of Revised Determination on Reconsideration

By application of January 11, 2005 a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on December 15, 2004 and published in the **Federal Register** on January 24, 2005 (70 FR 3390).

The TAA petition, filed on behalf of workers at DHS Veneer, Subsidiary of Faces by Bacon, Inc., Thomasville, North Carolina engaged in production of veneer faces was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met.

In the request for reconsideration, the petitioner provided additional list of the subject firm's customers and requested to investigate a secondary impact on the subject firm as an upstream supplier in the furniture industry. A review of the new facts determined that the workers of the subject firm may qualify eligible for TAA on the basis of a secondary upstream supplier impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that DHS Veneer, Subsidiary of Faces by Bacon, Inc., Thomasville, North Carolina supplied veneer faces that were used in the production of furniture, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of DHS Veneer, Subsidiary of Faces by Bacon, Inc., Thomasville, North Carolina qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of DHS Veneer, Subsidiary of Faces by Bacon, Inc., Thomasville, North Carolina who became totally or partially separated from employment on or after October 27, 2003 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day ofry, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–992 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,298, TA–W–55,298A, TA–W–55,298B]

Hewitt Soap Works, Inc., a Subsidiary Of Bradford Soap Works, Inc., Dayton, OH, Including Employees of Hewitt Soap Works, Inc., Dayton, OH Located in: Peapack, NJ, Atlanta, GA; Amended Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 25, 2004, applicable to workers of Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc., Dayton, Ohio. The notice was published in the **Federal Register** on September 23, 2004 (69 FR 57094).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Dayton, Ohio facility of Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc. located in Peapack, New Jersey and Atlanta, Georgia.

Mr. Thomas O'Callaghan and Mr. Larry Southard provided sales support services for the production of bar soap at the Dayton, Ohio location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Dayton, Ohio facility of Hewitt Soap Works, Inc., located in Peapack, New Jersey and Atlanta, Georgia. Since workers of the Dayton, Ohio location of the subject firm were certified eligible to apply for alternative trade adjustment assistance, the Department is extending this eligibility to Mr. Thomas O'Callaghan in Peapack, New Jersey and Mr. Larry Southard in Atlanta, Georgia.

The intent of the Department's certification is to include all workers of Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc., Dayton, Ohio, who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,298 is hereby issued as follows:

All workers of Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc., Dayton, Ohio (TA–W–55,298), including employees of Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc., Dayton, Ohio, located in Peapack, New Jersey (TA–W–55,298A) and Atlanta, Georgia (TA–W–55,298B), who became totally or partially separated from employment on or after June 22, 2003, through August 25, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of February 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–991 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,074]

Klipstand Manufacturing Company, Inc., Westfield, MA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Klipstand Manufacturing Company, Inc., Westfield, Massachusetts. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,074; Klipstand Manufacturing Company, Inc., Westfield, Massachusetts (February 15, 2005).

Signed at Washington, DC this 16th day of February 2005.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–988 Filed 3–8–05; 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 February 2005.

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 county 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–56,107; MI Windows & Doors, Inc., (formerly known as MI Home Products, Inc.), Hegins, PA.

TA–W–56,322; Roseburg Forest Products Particleboard Plant, a subsidiary of RLC Industries, Roseburg, OR.

TA–W–56,318 & A; Automatic Lathe Cutterhead, High Point, NC and Industrial Supply Co. Inc., subsidiary of Automatic Lathe Cutterhead, Hickory, NC.

TA–W–56,040; Solo Cup Company, Formerly Fondabrand, Including leased Workers of Spherion, Williamsburg, PA.

TA–W–56,311; Warp Knit Mills, Inc., Lincolnton, NC.

TA–W–56,229; Armstrong Wood Products, a division of Armstrong World Industries, Kensett, AR.

TA–W–56,026; Mayflower Vehicle Systems, Inc., South Charleston Facility, South Charleston, WV.

TA–W–56,099; Kenro, Inc., Fredonia, WI.

TA–W–56,251 & A, B, C; Hurd Millwork Co., Inc., a subsidiary of UIS, Inc., Medford, WI, Water Street Facility, Merrill, WI, Thomas Street Facility, Merrill, WI and Prospect Street Facility, Merrill, WI.

TA–W–56,083; Apex Pattern Company, Los Angeles, CA.

TA–W–56,194; Mid-West Spring and Stamping, including on-site leased workers of First Site Staffing, St. Paul Div., St. Paul, MN.

TA–W–56,304; Dimon, Inc., Rocky Mount, NC.

TA–W–56,241; Kleenn-Tex Industries, Inc., Plant #5, LaGrange, GA.

TA–W–55,942; Sierra Pine, Ltd, Springfield, OR.

TA–W–56,289; Box USA Group, Inc., a division of International Paper, Baltimore, MD.

TA–W–56,395; Xaloy, Inc., Tanner Div., New Castle, PA.

TA–W–56,413; Electra-Gear, a div. of Regal-Beloit Corp., Anaheim, CA.

TA–W–56,359; Chace Leather Products, Decker-Chace Div., Montgomery, PA.

TA–W–56,330; Iberia Sugar Cooperative, Inc., New Iberia, LA.

TA–W–56,483; Knowles Electronics LLC, Elgin, IL.

TA–W–56,495; Aurafin-Oroamerica, LLC, Providence Milling and Manufacturing Div., Providence, RI.

TA–W–56,474; Rexam Beverage Can Americas, a subsidiary of Rexam PLC, San Leandro, CA.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–56,362; Aetna, Inc., Tewksbury, MA.

TA–W–56,524; Jamaica Buick, LLC, Jamaica, NY.

TA–W–56,372; Dystar LP, Charlotte, NC.

TA–W–56,329; Spherion Corp., Spherion Pacific Workforce Enterprise LLC, Spherion-Contact Center Solutions, Las Vegas Facility, Las Vegas, NV.

TA–W–56,223 & A; Iomega, Corporation Headquarters, San Diego, CA and Iomega, Roy, UT.

TA–W–56,272; Geotrac, Inc., Norwalk, OH.

TA–W–56,086; Sony Electronics, Inc., Bristol-Regional Repair Center, including on-site leased workers from Remedy Staffing Services, Bristol, PA.

TA–W–56,155; All Access Apparel, Inc., Montebello, CA.

TA–W–56,312; CRG Computer Net Resource Group, High Point, NC.

TA–W–56,226; Phonak LLC, Also Known As Phonak, Inc., Rochester, MN.

TA–W–56,381; Dorby Frocks, Ltd, a division of Kellwood Co., Medley, FL.

TA–W–56,406; J-Star Bodco, Inc., Fort Atkinson, WI.

TA–W–56,285; Arcina, LLC, State College, PA.

TA–W–56,325; Nokia, Inc., Customer Care/After Market Services Site, Melbourne, FL.

TA–W–56,380; Watermark Paddlesports, Inc., Product Development Department and Cost Accounting Department, Arcata, CA.

TA–W–56,408; Emerson Electric Company, White-Rodgers Div., Affton, MO.

TA–W–56,455; Xsensible Footwear North America Ltd, Hickory, NC.

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–56,291; Stimson Lumber Co., a div. of Stimson, Forest Grove, OR.

TA–W–56,393; Morgan Advanced Materials & Technology, Inc., Carbon Technology Div., including on-site leased workers from PKS Associates, Exeter, RI.

TA–W–56,189; CDI Corp., Workers at Hewlett-Packard Co., Corvallis, OR.

TA–W–56,321; Honeywell Technology Solutions, Inc., formerly Known As Allied Signed Technical Solutions, a div. of Honeywell International, Inc., Rocky Mount, NC.

TA–W–56,569; Wickers Sportswear, Inc., Selmer, TN.

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–56,320; Georgia Gulf Corp., Tiptonville, TN.

TA–W–56,252; Boise Cascade LLC, Boise Paper Solutions Location, International Falls, MN.

TA–W–56,344; Eagle Picher Automotive, Manchester, TN.

TA–W–56,274; Shane-Hunter, Inc., San Francisco, CA.

TA–W–56,216; Moyie Springs Lumber Company, a div. of Riley Creek Lumber Co., Moyie Springs, ID.

TA–W–56,135; Freescale Semiconductor, Tempe Final Manufacturing, formerly Motorola SPS, Inc., Tempe, AZ.

TA–W–56,387; Long Manufacturing, Thermal Products Div., a subsidiary of Dana Corp., Sheffield, PA.

The investigation revealed that criteria (3)(A) has not been met. The workers' firm (or subdivision) is not a supplier and the component parts it supplied to trade- affected companies did not account for at least 20 percent of the production or sales of the workers' firm.

TA–W–56,200; Multi-Plastics, including leased workers of M-Ploy Temporaries, Saegertown, PA.

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–56,317; Chelsea Grinding Co., Jackson, MS.

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–56,441; Lusero Corporation, d/b/a Moore Enterprises, Longmont, CO: December 30, 2003.

TA–W–56,305; Legend Softball, Inc., Tullahoma, TN: January 6, 2004.

TA–W–56,308; CFM Home Products, Skokie, IL: January 6, 2004.

TA–W–56,058; Harrison Publishing Co., Asheville, NC: November 14, 2003.

TA–W–56,347; Auburn Hosiery Mills, Inc., Auburn, KY: December 14, 2004.

TA–W–56,358; Hospital Specialty Co., a div. of The Tranzonic Companies, Cleveland, OH: December 20, 2003.

TA–W–56,364 & A & B; Dunmore Furniture Industries, Plant 1, Hickory, NC, Plant 2 Granite Falls, NC, Plant 3, Newton, NC: January 14, 2004.

TA–W–56,440; Bailey Knit Corp., Fort Payne, AL: January 26, 2004.

TA–W–56,526; M & F Western Products, Inc., Nocona, TX: January 10, 2004.

TA–W–56,418 & A; Pfaltzgraff Co., including on-site leased workers from Manpower, Inc., Contemporary Personnel, and Adecco, Thomasville, PA, Pfaltzgraff Co., Pfaltzgraf Distribution Center, including on-site leased workers from Manpower, Inc., and Adecco, York, PA: January 27, 2004.

TA–W–56,431; Kennedy Die Castings, Inc., including on-site leased workers from Excel Staffing, Worcester, MA: January 3, 2004.

TA–W–56,314; Southern Home Accents, Abbeville, SC: January 5, 2004.

TA–W–56,310; Howell Industries, Inc., d/b/a Oxford Automotive, Inc., Lapeer, MI: January 7, 2004.

TA–W–56,306; Jerome Fashions, South El Monte, CA: January 6, 2004.

TA–W–56,384; Valley Knit, Inc., Fort Payne, AL: January 21, 2004.

TA–W–56,341; Kaysam Worldwide, Inc., Totowa, NJ: January 14, 2004.

TA–W–56,520; Orgo-Thermit, Inc., a subsidiary of Elektro-Thermit, Inc., Manchester, NJ: February 7, 2004.

TA–W–56,480; Tyco Electronics, Tyco Printed Circuits Group, Dallas, OR: February 1, 2004.

TA–W–56,500; Burlington Rug Corp., including leased workers of Employer's Staffing of America, Yanoor Corporation Div., Monticello, AR: February 4, 2004.

TA–W–56,295 & A, B, C & D; Springs Industries, including on-site leased workers of Diversco, Sardis Plant, Sardis, MS, Wamsutta Plant, including on-site leased workers of Johnson Controls, Anderson, SC, Springs Industries Custom Designs, including on-site leased workers of Staffmark, Fullerton, CA, Ellijay Plant, including on-site leased workers of Defender Services, Ellijay, GA and Columbus Facility, Columbus, IN: January 5, 2004.

TA–W–56,296 & A, B; Charles Craft, Inc., Corporate Headquarters, Laurinburg, NC, Charles Craft Consumer Products LLC, a subsidiary of Charles Craft, Inc., including leased workers of Olsten Staffing, Laurinburg Plant, Laurinburg, NC and Charles Craft Yarns LLC, a subsidiary of Charles Craft, Inc., Siler City Plant, Siler City, NC: January 5, 2004.

TA–W–56,397; Bath Unlimited, d/b/a Franklin Brass, Rancho Dominquez, CA: January 20, 2004.

TA–W–56,379; Pride Manufacturing, Inc., Plants 1, 2 and 3, Florence, WI: January 19, 2004.

TA–W–56,169; JDS Uniphase, Ewing, NJ: December 6, 2003.

TA–W–56,288; RBX Industries, Inc., Colt, AR: January 4, 2004.

TA–W–56,523; Hunter Technologies, Inc., Montross, VA: February 1, 2004.

TA–W–56,411; Bayer Corporate and Business Services, LLC (BCBS), Information Systems Group, a subsidiary of Bayer Corporation, West Haven, CT: January 24, 2004.

TA–W–56,195; Crotty Corp., Gainsboro, TN: December 9, 2003.

TA–W–56,266; Louisville Bedding Co., Bunsen Plant, Louisville, KY and Munfordville Plant, Munfordville, KY: December 28, 2003.

TA–W–56,260; Wheatland Tube Co., Sharon Plant, Sharon, PA: December 17, 2003.

TA–W–56,259; Menasha Packaging Company, LLC, Display Group-Mequon, Mequon, WI: December 10, 2003.

TA–W–56,254; Textron Fastening Systems, Ring Screw Div., Warren, MI: December 20, 2003.

TA–W–56,048; Methode Electronics, Automotive Electronic Controls Div., Carthage, IL: November 17, 2003.

TA–W–56,342; Electric Mobility Corp., Sewell, NJ: January 14, 2004.

TA–W–56,340; The Keller Manufacturing Co., Inc., Louisville, KY: January 11, 2004.

TA–W–56,161; Brooks Hosiery, Inc., Sylvania, AL: December 6, 2003.

TA–W–56,361; Hedstrom Corp., Arlington Heights, IL: January 12, 2004.

TA–W–56,333; Westpoint Stevens, Bed Products Div., Clemson, SC: January 11, 2004.

TA–W–56,299; Atlas Textile Col, Inc., Commerce, CA: January 4, 2004.

TA–W–56,278; Lexington Die Casting, a div. of Lexington Precision Corp., including on-site leased workers of Kelly Services and Adecco Employment Services, Lakewood, NY: December 21, 2003.

TA–W–56,271; Houze Glass Corp., subsidiary of Wilson Brothers USA, Point Marion, PA: December 22, 2003.

TA–W–56,268; Gemini Textile Screenprint, Battleboro, NC: January 3, 2004.

TA–W–56,249; Spinnerin Dye LLC, including leased workers at Tempo, Net2staff and Brickforce, South Hackensack, NJ: December 21, 2003.

TA–W–56,165; Inland Press, Menomonee Falls, WI: December 6, 2003.

TA–W–56,292; Maui Pineapple Co., Kahului Cannery, Kahului, HI: December 15, 2003.

TA–W–56,234; ALT Sportswear, Inc., New York, NY: December 14, 2003.

TA–W–56,257; Ames True Temper, Plant #1, a subsidiary of Castle Harlan, Parkersburg, WV: October 8, 2004.

TA–W–56,247; The Horse Closet, Williansport, PA: December 21, 2003.

TA–W–56,349; Alexis Playsafe, Inc., a subsidiary of The Warren Featherbone Co., Gainesville, GA: January 14, 2004.

TA–W–56,290; Northeast Woodturning, Inc., West Farmington, ME: December 30, 2003.

TA–W–56,235; J & G Sewing Co., Inc., San Francisco, CA: December 18, 2003.

TA–W–56,336; Graco Children's Products, Inc., Elverson, PA: January 11, 2004.

TA–W–56,324; Southern Wood Products, a div. of Brown Jordan International, Sparta, TN: January 10, 2004.

TA–W–56,275; House of Brussels Chocolates, San Francisco, CA: December 14, 2003.

TA–W–56,273; National Spinning Operation, LLC, formerly known as National Spinning Co., LLC, Washington Yarn Div., a div. of National Spinning Co., Inc., Washington, NC: January 22, 2005.

TA–W–56,219; International Textile Group, Reidsville Weaving Plant, Burlington House Div., formerly Burlington Industries, Reidsville, NC: December 19, 2004.

TA–W–56,319; Diversified Engraving Stamp and Machine Co., LLC, formerly known as Diversified

Engraving Stamp and Machine Co., Inc., Akron, OH: December 22, 2003.

TA–W–56,201; Ruffin Mold and Machine, including leased workers of Staffmark, Benton, AR: December 10, 2003.

TA–W–56,332; Thomson, Inc., Research & Development, Lancaster, PA: January 3, 2005.

TA–W–56,326; Electric Cords, Inc., Lebanon, KY: December 15, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–56,316; American Standard, Inc., Bath & Kitchen Div., Acrylics Department, Salem, OH: January 10, 2004.

TA–W–56,328; Art Leather Manufacturing Co., Inc., San Diego, CA: January 6, 2004.

TA–W–56,280; Hutchinson Seal, National O'Ring Div., Downey, CA: December 9, 2003.

TA–W–56,185; Adecco Staffing, Working at Steelcase, Inc., Wood Div., Fletcher, NC: November 23, 2003.

TA–W–56,462; Nakanishi Manufacturing Corporation, Rubber Seal Department, Winterville, GA: January 31, 2004.

TA–W–56,501; Decra Mold, a div,. of Woodgrain Milwork, Inc., including leased workers from Smith Staffing, Inc., Oklahoma City, OK: January 31, 2004.

TA–W–56,422; Johnson Controls, Inc., Glasgow, KY: January 25, 2004.

TA–W–56,488; Reed Manufacturing Co., Inc., Tupelo, MS: January 21, 2004.

TA–W–56,506; Futuresmart (Honeywell Security & Custom Electronics) Div. of Honeywell International, Draper UT: January 13, 2004.

TA–W–56,535; Kanthal Corp., Globar Div., Niagara Falls, NY: January 25, 2004.

TA–W–56,447; BASF Corp., Morganton Liquid Coatings Plant, Morganton, NC: January 31, 2004.

TA–W–56,419; Schneider Electric, Oxford Manufacturing Plant, Oxford, OH: January 27, 2004.

TA–W–56,345; Kohler Co., Searcy Stainless Steel Div., Searcy, AR: January 13, 2004.

TA–W–56,373; Halo Holdings LC, Hialeah, FL: January 19, 2004.

TA–W–56,503; Anthra Textiles Co., Inc., a subsidiary of Amicale Industries, Inc., Kulpmont, PA: January 6, 2004.

TA–W–56,527; SET Enterprises, Warren, MI: February 7, 2004.

TA–W–56,475; Neocare, a div. of Arrow International, San Antonio, TX: January 31, 2004.

TA–W–56,446; Old Mother Hubbard, Lowell, MA: January 26, 2004.

TA–W–56,307; Carrier Corp., Morrison, TN: January 6, 2004.

TA–W–56,445; International Apparel Group, LLC, Allendale, SC: January 28, 2004.

TA–W–56,416; Corning Gilbert, Inc., Glendale, AZ: January 25, 2004.

TA–W–56,396; The Goodyear Tire & Rubber Company, Engineered Products Div., Lincoln, NE: January 30, 2005.

TA–W–56,334; Westan, a div. of The E.H. Hall Co., Inc., Westfield, PA: January 11, 2004.

TA–W–56,327; YSD Industries (2004), Inc., Youngstown, OH: December 29, 2003.

TA–W–56,525; Tyco Healthcare, Inc., Retail Group, including on-site leased workers of Manpower, Inc., Waco, TX: February 4, 2004.

TA–W–56,424; Entran Devices, Inc., a subsidiary of Measurement Specialties, Inc., Fairfield, NJ: January 28, 2004.

TA–W–56,385; Cushion Craft Biederlack Corp., a subsidiary of Biederlack (US), Inc., Lisbon Falls, ME: January 19, 2004.

TA–W–56,348; Holt Hosiery Mills, Inc., Holt Hosiery Sewing Facility, Willard, NC: January 14, 2004.

TA–W–56,293; Dana Corporation, Heavy Vehicle Technologies and Systems Operations, Off-Highway North America Div., Statesville, NC: December 27, 2003.

TA–W–56,267; Woodsocket Spinning Co., a subsidiary of Amicale Industries, Inc., Charlotte, NC: December 28, 2003.

TA–W–56,248; Lear Corporation, Interior Systems, including on-site leased workers of Aerotek Commercial Staffing, Carlisle, PA: January 28, 2005.

TA–W–56,382; Paxar Corp., including on-site leased workers of Westaff and Manpower, Hillsville, VA: January 19, 2004.

TA–W–56,376; Blue Mountain Wallcoverings, Knoxville Facility, Knoxville, TN: January 17, 2004.

TA–W–56,423; Performance, Inc., Nova Designs Div., formerly Performance Direct, Inc., Graham, NC: January 26, 2004.

TA–W–56,378; Masonite Door Corporation, a div. of Masonite International, Richmond, IN: January 20, 2004.

TA–W–56,363; Occidental Chemical Corp., Pottstown, PA: January 18, 2004.

TA–W–56,356; Eaton Corporation, General Products Div., Air Controls Business Unit, including leased workers from Adecas and Person Industries, Roxboro, NC: January 18, 2004.

TA–W–56,352; Hydro Gate Corp., a subsidiary of Henry Pratt Co., a subsidiary of Mueller Co., including on-site leased workers of Manpower, Mile High, Commerce City, CO: December 20, 2003.

TA–W–56,302; Tillman of Yuma, Inc., subsidiary of John Tillman Co., Yuma, AZ: January 4, 2004.

TA–W–56,298; GST Autoleather, including on-site leased workers of Gage Personal, Mack Employment Services, Inc., Aerotek Commercial Staffing, Accountemps, Advance Personnel, Fleetwood, PA: February 4, 2005.

TA–W–56,265 & A, B; Fypon, Ltd, Stewartstown, PA, including on-site leased workers from Strategic Edge Solutions (SES), Seven Valleys, PA and including on-site leased workers from Strategic Edge Solutions (SES), Hunt Valley, MD: December 28, 2003.

TA–W–56,237; Tietex International, Ltd, Spartanburg, SC: December 8, 2003.

TA–W–56,339; Mastercraft Fabrics, LLC, Eagle Mountain Finishing, Cramerton, NC: January 12, 2004.

TA–W–56,313; Howmet Aluminum Castings, Hillsboro, Div., Hillsboro, TX: January 7, 2004.

TA–W–56,250; Bruner Ivory Handle Co., a Link Family of Handle Makers, Hope, AR: December 21, 2003.

TA–W–56,191; Nilfisk-Advance, Inc., Plymouth, MN: January 10, 2005.

TA–W–56,225; Beverly Creations, Inc., New York, NY: December 16, 2003.

TA–W–56,190; Knowles Electronics, LLC, Itasca, IL: December 6, 2003.

TA–W–56,146; Southern Ohio Fabricators, Inc., Batavia, OH: November 20, 2003.

TA–W–56,435; Nagle Industries, Cumberland City, TN: January 28, 2004.

TA–W–56,351; Avanex Corp., including on-site leased workers of Adecco and Manpower, Painted Post, NY: January 19, 2004.

TA–W–56,350; Woodbridge Corp., Whitmore Lake, MI: January 18, 2004.

TA–W–56,262; Hawk Motors, a div. of The Hawk Corp., Alton, IL: December 27, 2003.

TA–W–56,246; Glastic Molding, LLC, a subsidiary of Glastic Corp., Jefferson, OH: December 17, 2003.

TA–W–56,375; Cooper Power Systems, a div. of Cooper Industries, Ltd, including on-site leased workers of

Staffmark and Olsten, Fayetteville, AR: January 20, 2004.

TA–W–56,279; Raytek Corporation, Santa Cruz, CA: December 14, 2003.

TA–W–55,958; LSI Logic Manufacturing Services, Gresham Operations, including leased workers of PRO Temporary Services, Gresham, OR: November 3, 2003.

TA–W–56,338; Wellington Cordage, LLC, Eatonton, GA: January 9, 2004.

TA–W–56,370; Meridian Automotive Systems, Dearborn, MI: December 29, 2003.

TA–W–56,429; Jowett Garments Factory, Inc., South El Monte, CA: January 21, 2004.

TA–W–56,492; Stabilus, Inc., Gastonia, NC: January 31, 2004.

TA–W–56,529; CTS Corp., Berne, IN: February 7, 2004.

TA–W–56,365; Glad Manufacturing, Cartersville, GA: January 13, 2004.

TA–W–56,367; Columbus Industries Texas LLP, a subsidiary of Columbus Industries, Inc., including leased workers of Allegiance Staffing, El Paso, TX: January 21, 2004.

TA–W–56,394; BBB Industries, OCA Division, Mira Loma, CA: January 19, 2004.

TA–W–56,224; Sanmina—SCI, Fremont, CA: November 18, 2003.

TA–W–56,264; Sanmina—SCI Corp., Pleasant Prairie, WI: December 20, 2003.

TA–W–56,270; Exxonmobil Chemical Co., Films Div., Macedon Scale Up Facility, a subsidiary of Exxonmobil Corp., Macedon, NY: December 20, 2003.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–55,877; Electronic Data Systems, on-site leased workers at Maxtor Corporation, Longmont, CA: October 21, 2003.

TA–W–55,978; Shakespeare Co., LLC, Monofilament Div., Columbia, SC: November 5, 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 as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–56,270; Exxonmobil Chemical Co., Films Division, Macedon Scale Up Facility, a subsidiary of Exxonmobil Corp., Macedon, NY

TA–W–56,264; Sanmina—SCI Corp., Pleasant Prairie, WI

TA–W–56,224; Sanmina—SCI, Fremont, CA

TA–W–56,205; France, A Scott Fetzer Co., including leased workers of Personnel Management, Inc., Fairview, TN

TA–W–56,367; Columbus Industries Texas LLP, a subsidiary of Columbus Industries, Inc., including leased workers of Allegiance Staffing, El Paso, TX

TA–W–56,365; Glad Manufacturing, Cartersville, GA

TA–W–56,529; CTS Corp., Berne, IN

TA–W–56,492; Stabilus, Inc., Gastonia, NC

TA–W–56,370; Meridian Automotive Systems, Dearborn, MI

TA–W–56,338; Wellington Cordage, LLC, Eatonton, GA

TA–W–56,319; Diversified Engraving Stamp and Machine Co., LLC, formerly known as Diversified Engraving Stamp and Machine Co., Inc., Akron, OH

TA–W–56,332; Thomson, Inc., Research & Development, Lancaster, PA

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–56,394; BBB Industries, OCA Division, Mira Loma, CA

TA–W–56,429; Jowett Garments Factory, Inc., South El Monte, CA

TA–W–56,326; Electric Cords, Inc., Lebanon, KY

TA–W–56,201; Ruffin Mold and Machine, including leased workers of Staffmark, Benton, AR

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–56,329; Sperion Corp., Spherion Pacific Workforce Enterprise LLC, Spherion—Contact Center Solutions, Las Vegas Facility, Las Vegas, NV

TA–W–56,223 & A; Iomega, Corp. Headquarters, San Diego, CA and Iomega, Roy, UT

TA–W–56,272; Geotrac, Inc., Norwalk, OH

TA–W–56,155; All Access Apparel, Inc., Montebello, CA

TA–W–56,086; Sony Electronics, Inc., Bristol—Regional Repair Center, including on-site leased workers from Remedy Staffing Services, Bristol, PA

TA–W–56,312; CRG Computer Net Resource Group, High Point, NC

TA–W–56,226; Phonak LLC, also known as Phonak, Inc., Rochester, MN

TA–W–56,381; Dorby Frocks, Ltd, a div. of Kellwood Co., Medley, FL

TA–W–56,406; J-Star Bodco, Inc., Fort Atkinson, WI

TA–W–56,325; Nokia, Inc., Customer Care/After Market Services Site, Melbourne, FL

TA–W–56,285; Arcina, LLC, State College, PA

TA–W–56,380; Watermark Paddlesports, Inc., Product Development Department and Cost Accounting Department, Arcata, CA

TA–W–56,408; Emerson Electric Co., White-Rodgers Div., Affton, MO

TA–W–56,455; Xsensible Footwear North America Ltd, Hickory, NC

TA–W–56,040; Solo Cup Company, Formerly Fondabrand, including leased workers of Spherion, Williamsburg, PA.

TA–W–56,311; Warp Knit Mills, Inc., Lincolnton, NC.

TA–W–56,229; Armstrong Wood Products, a div. of Armstrong World Industries, Kensett, AR.

TA–W–56,026; Mayflower Vehicle Systems, Inc., South Charleston Facility, South Charleston, WV.

TA–W–56,099; Kenro, Inc., Fredonia, WI.

TA–W–56,251 & A, B, C; Hurd Millwork Company, Inc., a subsidiary of UIS, Inc., Medford, WI, Water Street Facility, Merrill, WI, Thomas Street Facility, Merrill, WI and Prospect Street Facility, Merrill, WI.

TA–W–56,083; Apex Pattern Company, Los Angeles, CA.

TA–W–56,194; Mid-West Spring and Stamping, including on-site leased workers of First Site Staffing, St. Paul Div., St. Paul, MN.

TA–W–56,304; Dimon, Inc., Rocky Mount, NC.

TA–W–56,241; Kleen-Tex Industries, Inc., Plant #5, LaGrange, GA.

TA–W–55,942; Sierra Pine, Ltd, Springfield, OR.

TA–W–56,289; Box USA Group, Inc., a div. of International Paper, Baltimore, MD.

TA–W–56,395; Xaloy, Inc., Tanner Div., New Castle, PA.

TA–W–56,413; Electra-Gear, a div. of Regal-Beloit Corp., Anaheim, CA.

TA–W–56,569; Wickers Sportswear, Inc., Selmer, TN.

TA–W–56,359; Chace Leather Products, Decker/Chace Div., Montgomery, PA.

TA–W–56,330; Iberia Sugar Cooperative, Inc., New Iberia, LA.

TA–W–56,483; Knowles Electronics LLC, Elgin, IL.
TA–W–56,474; Rexam Beverage Can Americas, a subsidiary of Rexam PLC, San Leandro, CA.
TA–W–56,291; Stimson Lumber Company, a div. of Stimson, Forest Grove, OR.
TA–W–56,393; Morgan Advanced Materials & Technology, Inc., Carbon Technology Div., including on-site leased workers from PKS Associates, Exeter, RI.
TA–W–56,321; Honeywell Technology Solutions, Inc., formerly known as Allied Signal Technical Solutions, a div. of Honeywell International, Inc. Rocky Mount, NC.
TA–W–56,320; Georgia Gulf Corp., Tiptonville, TN.
TA–W–56,252; Boise Cascade LLC, Boise Paper Solutions Location, International Falls, MN.
TA–W–056,344; Eagle Picker Automotive, Manchester, TN.
TA–W–56,274; Shane-Hunter, Inc., San Francisco, CA.
TA–W–56,216; Moyie Springs Lumber Company, a Div. of Riley Creek Lumber Co., Moyie Springs, ID.
TA–W–56,135; Freescale Semiconductor, Tempe Final Manufacturing, formerly Motorola SPS, Inc., Tempe, AZ.
TA–W–56,387; Long Manufacturing, Thermal Products Div., a subsidiary of Dana Corp., Sheffield, PA.
TA–W–56,200; Multi-Plastics, including leased workers of M-Ploy Temporaries, Saegertown, PA.
TA–W–56,189; CDI Corp., Workers at Hewlett-Packard Company, Corvallis, OR.
TA–W–56,495; Aurafin-Oroamerica, LLC, Providence Milling and Manufacturing Div., Providence, RI.
TA–W–56,317; Chelsea Grinding Company, Jackson, MS.
TA–W–52,399A; Morelock Enterprises, Closures Div., including leased workers from Staffing Services, Bend, OR.

Affirmative Determinations for Alternative Trade Adjustment 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–56,347; Auburn Hosiery Mills, Inc., Auburn, KY: December 14, 2004.
TA–W–56,358; Hospital Specialty Co., a div. of The Tranzonic Companies, Cleveland, OH: December 20, 2003.
TA–W–56,364 & A & B; Dunmore Furniture Industries, Plant 1, Hickory, NC, Plant 2 Granite Falls, NC, Plant 3, Newton, NC: January 14, 2004.
TA–W–56,440; Bailey Knit Corp., Fort Payne, AL: January 26, 2004.
TA–W–56,526; M & F Western Products, Inc., Nocona, TX: January 10, 2004.
TA–W–56,418 & A; Pfaltzgraff Co., including on-site leased workers from Manpower, Inc., Contemporary Personnel, and Adecco, Thomasville, PA, Pfaltzgraff Co., Pfaltzgraff Distribution Center, including on-site leased workers from Manpower, Inc., and Adecco, York, PA: January 27, 2004.
TA–W–56,431; Kennedy Die Castings, Inc., including on-site leased workers from Excel Staffing, Worcester, MA: January 3, 2004.
TA–W–56,314; Southern Home Accents, Abbeville, SC: January 5, 2004.
TA–W–56,310; Howell Industries, Inc., d/b/a Oxford Automotive, Inc., Lapeer, MI: January 7, 2004.
TA–W–56,306; Jerome Fashions, South El Monte, CA: January 6, 2004.
TA–W–56,384; Valley Knit, Inc., Fort Payne, AL: January 21, 2004.
TA–W–56,341; Kaysam Worldwide, Inc., Totowa, NJ: January 14, 2004.
TA–W–56,520; Orgo-Thermit, Inc., a subsidiary of Elektro-Thermit, Inc., Manchester, NJ: February 7, 2004.
TA–W–56,480; Tyco Electronics, Tyco Printed Circuits Group, Dallas, OR: February 1, 2004.
TA–W–56,500; Burlington Rug Corp., including leased workers of Employer's Staffing of America, Yanoor Corporation Div., Monticello, AR: February 4, 2004.
TA–W–56,295 & A, B, C & D; Springs Industries, including on-site leased workers of Diversco, Sardis Plant, Sardis, MS, Wamsutta Plant, including on-site leased workers of Johnson Controls, Anderson, SC, Springs Industries Custom Designs, including on-site leased workers of Staffmark, Fullerton, CA, Ellijay Plant, including on-site leased workers of Defender Services, Ellijay, GA and Columbus Facility, Columbus, IN: January 5, 2004.
TA–W–56,296 & A, B; Charles Craft, Inc., Corporate Headquarters, Laurinburg, NC, Charles Craft Consumer Products LLC, a subsidiary of Charles Craft, Inc., including leased workers of Olsten Staffing, Laurinburg Plant, Laurinburg, NC and Charles Craft Yarns LLC, a subsidiary of Charles Craft, Inc., Siler City Plant, Siler City, NC: January 5, 2004.
TA–W–56,397; Bath Unlimited, d/b/a Franklin Brass, Rancho Dominquez, CA: January 20, 2004.
TA–W–56,379; Pride Manufacturing, Inc., Plants 1, 2 and 3, Florence, WI: January 19, 2004.
TA–W–56,169; JDS Uniphase, Ewing, NJ: December 6, 2003.
TA–W–56,288; RBX Industries, Inc., Colt, AR: January 4, 2004.
TA–W–56,523; Hunter Technologies, Inc., Montross, VA: February 1, 2004.
TA–W–56,411; Bayer Corporate and Business Services, LLC (BCBS), Information Systems Group, a subsidiary of Bayer Corporation, West Haven, CT: January 24, 2004.
TA–W–56,195; Crotty Corp., Gainsboro, TN: December 9, 2003.
TA–W–56,266; Louisville Bedding Co., Bunsen Plant, Louisville, KY and Munfordville Plant, Nunfordville, KY: December 28, 2003.
TA–W–56,260; Wheatland Tube Co., Sharon Plant, Sharon, PA: December 17, 2003.
TA–W–56,259; Menasha Packaging Company, LLC, Display Group-Mequon, Mequon, WI: December 10, 2003.
TA–W–56,254; Textron Fastening Systems, Ring Screw Div., Warren, MI: December 20, 2003.
TA–W–56,048; Methode Electronics, Automotive Electronic Controls Div., Carthage, IL: November 17, 2003.
TA–W–56,342; Electric Mobility Corp., Sewell, NJ: January 14, 2004.
TA–W–56,340; The Keller Manufacturing Co., Inc., Louisville, KY: January 11, 2004.
TA–W–56,161; Brooks Hosiery, Inc., Sylvania, AL: December 6, 2003.
TA–W–56,361; Hedstrom Corp., Arlington Heights, IL: January 12, 2004.
TA–W–56,333; Westpoint Stevens, Bed Products Div., Clemson, SC: January 11, 2004.

TA–W–56,299; Atlas Textile Col, Inc., Commerce, CA: January 4, 2004.
TA–W–56,278; Lexington Die Casting, a div. of Lexington Precision Corp., including on-site leased workers of Kelly Services and Adecco Employment Services, Lakewood, NY: December 21, 2003.
TA–W–56,271; Houze Glass Corp., subsidiary of Wilson Brothers USA, Point Marion, PA: December 22, 2003.
TA–W–56,268; Gemini Textile Screenprint, Battleboro, NC: January 3, 2004.
TA–W–56,249; Spinnerin Dye LLC, including leased workers at Tempo, Net2staff and Brickforce, South Hackensack, NJ: December 21, 2003.
TA–W–56,165; Inland Press, Menomonee Falls, WI: December 6, 2003.
TA–W–56,292; Maui Pineapple Co., Kahului Cannery, Kahului, HI: December 15, 2003.
TA–W–56,234; ALT Sportswear, Inc., New York, NY: December 14, 2003.
TA–W–56,257; Ames True Temper, Plant #1, a subsidiary of Castle Harlan, Parkersburg, WV: October 8, 2004.
TA–W–56,247; The Horse Closet, Williamsport, PA: December 21, 2003.
TA–W–56,349; Alexis Playsafe, Inc., a subsidiary of The Warren Featherbone Co., Gainesville, GA: January 14, 2004.
TA–W–56,290; Northeast Woodturning, Inc., West Farmington, ME: December 30, 2003.
TA–W–56,235; J & G Sewing Co., Inc., San Francisco, CA: December 18, 2003.
TA–W–56,336; Graco Children's Products, Inc., Elverson, PA: January 11, 2004.
TA–W–56,324; Southern Wood Products, a div. of Brown Jordan International, Sparta, TN: January 10, 2004.
TA–W–56,275; House of Brussels Chocolates, San Francisco, CA: December 14, 2003.
TA–W–56,273; National Spinning Operation, LLC, formerly known as National Spinning Co., LLC, Washington Yarn Div., a div. of National Spinning Co., Inc., Washington, NC: January 22, 2005.
TA–W–56,219; International Textile Group, Reidsville Weaving Plant, Burlington House Div., formerly Burlington Industries, Reidsville, NC: December 19, 2004.
TA–W–56,422; Johnson Controls, Inc., Glasgow, KY: January 25, 2004.
TA–W–56,488; Reed Manufacturing Co., Inc., Tupelo, MS: January 21, 2004.
TA–W–56,506; Futuresmart (Honeywell Security & Custom Electronics) Div. of Honeywell International, Draper UT: January 13, 2004.
TA–W–56,535; Kanthal Corp., Globar Div., Niagara Falls, NY: January 25, 2004.
TA–W–56,447; BASF Corp., Morganton Liquid Coatings Plant, Morganton, NC: January 31, 2004.
TA–W–56,419; Schneider Electric, Oxford Manufacturing Plant, Oxford, OH: January 27, 2004.
TA–W–56,345; Kohler Co., Searcy Stainless Steel Div., Searcy, AR: January 13, 2004.
TA–W–56,373; Halo Holdings LC, Hialeah, FL: January 19, 2004.
TA–W–56,503; Anthra Textiles Co., Inc., a subsidiary of Amicale Industries, Inc., Kulpmont, PA: January 6, 2004.
TA–W–56,527; SET Enterprises, Warren, MI: February 7, 2004.
TA–W–56,475; Neocare, a div. of Arrow International, San Antonio, TX: January 31, 2004.
TA–W–56,446; Old Mother Hubbard, Lowell, MA: January 26, 2004.
TA–W–56,307; Carrier Corp., Morrison, TN: January 6, 2004.
TA–W–56,445; International Apparel Group, LLC, Allendale, SC: January 28, 2004.
TA–W–56,416; Corning Gilbert, Inc., Glendale, AZ: January 25, 2004.
TA–W–56,396; The Goodyear Tire & Rubber Company, Engineered Products Div., Lincoln, NE: January 30, 2005.
TA–W–56,334; Westan, a div. of The E.H. Hall Co., Inc., Westfield, PA: January 11, 2004.
TA–W–56,327; YSD Industries (2004), Inc., Youngstown, OH: December 29, 2003.
TA–W–56,525; Tyco Healthcare, Inc., Retail Group, including on-site leased workers of Manpower, Inc., Waco, TX: February 4, 2004.
TA–W–56,424; Entran Devices, Inc., a subsidiary of Measurement Specialties, Inc., Fairfield, NJ: January 28, 2004.
TA–W–56,385; Cushion Craft Biederlack Corp., a subsidiary of Biederlack (US), Inc., Lisbon Falls, ME: January 19, 2004.
TA–W–56,348; Holt Hosiery Mills, Inc., Holt Hosiery Sewing Facility, Willard, NC: January 14, 2004.
TA–W–56,293; Dana Corporation, Heavy Vehicle Technologies and Systems Operations, Off-Highway North America Div., Statesville, NC: December 27, 2003.
TA–W–56,267; Woodsocket Spinning Co., a subsidiary of Amicale Industries, Inc., Charlotte, NC: December 28, 2003.
TA–W–56,248; Lear Corporation, Interior Systems, including on-site leased workers of Aerotek Commercial Staffing, Carlisle, PA: January 28, 2005.
TA–W–56,382; Paxar Corp., including on-site leased workers of Westaff and Manpower, Hillsville, VA: January 19, 2004.
TA–W–56,376; Blue Mountain Wallcoverings, Knoxville Facility, Knoxville, TN: January 17, 2004.
TA–W–56,423; Performance, Inc., Nova Designs Div., formerly Performance Direct, Inc., Graham, NC: January 26, 2004.
TA–W–56,378; Masonite Door Corporation, a div. of Masonite International, Richmond, IN: January 20, 2004.
TA–W–56,363; Occidental Chemical Corp., Pottstown, PA: January 18, 2004.
TA–W–56,356; Eaton Corporation, General Products Div., Air Controls Business Unit, including leased workers from Adecas and Person Industries, Roxboro, NC: January 18, 2004.
TA–W–56,352; Hydro Gate Corp., a subsidiary of Henry Pratt Co., a subsidiary of Mueller Co., including on-site leased workers of Manpower, Mile High, Commerce City, CO: December 20, 2003.
TA–W–56,302; Tillman of Yuma, Inc., subsidiary of John Tillman Co., Yuma, AZ: January 4, 2004.
TA–W–56,298; GST Autoleather, including on-site leased workers of Gage Personal, Mack Employment Services, Inc., Aerotek Commercial Staffing, Accountemps, Advance Personnel, Fleetwood, PA: February 4, 2005.
TA–W–56,265 & A, B; Fypon, Ltd, Stewartstown, PA, including on-site leased workers from Strategic Edge Solutions (SES), Seven Valleys, PA and including on-site leased workers from Strategic Edge Solutions (SES), Hunt Valley, MD: December 28, 2003.
TA–W–56,237; Tietex International, Ltd, Spartanburg, SC: December 8, 2003.
TA–W–56,339; Mastercraft Fabrics, LLC, Eagle Mountain Finishing, Cramerton, NC: January 12, 2004.
TA–W–56,313; Howmet Aluminum Castings, Hillsboro, Div., Hillsboro, TX: January 7, 2004.
TA–W–56,250; Bruner Ivory Handle Co., a Link Family of Handle Makers, Hope, AR: December 21, 2003.
TA–W–56,191; Nilfisk-Advance, Inc., Plymouth, MN: January 10, 2005.
TA–W–56,225; Beverly Creations, Inc., New York, NY: December 16, 2003.
TA–W–56,190; Knowles Electronics, LLC, Itasca, IL: December 6, 2003.

TA–W–56,146; Southern Ohio Fabricators, Inc., Batavia, OH: November 20, 2003.
TA–W–56,435; Nagle Industries, Cumberland City, TN: January 28, 2004.
TA–W–56,351; Avanex Corp., including on-site leased workers of Adecco and Manpower, Painted Post, NY: January 19, 2004.
TA–W–56,350; Woodbridge Corp., Whitmore Lake, MI: January 18, 2004.
TA–W–56,262; Hawk Motors, a div. of The Hawk Corp., Alton, IL: December 27, 2003.
TA–W–56,246; Glastic Molding, LLC, a subsidiary of Glastic Corp., Jefferson, OH: December 17, 2003.
TA–W–56,375; Cooper Power Systems, a div. of Cooper Industries, Ltd, including on-site leased workers of Staffmark and Olsten, Fayetteville, AR: January 20, 2004.
TA–W–56,279; Raytek Corporation, Santa Cruz, CA: December 14, 2003.
TA–W–55,958; LSI Logic Manufacturing Services, Gresham Operations, including leased workers of PRO Temporary Services, Gresham, OR: November 3, 2003.

I hereby certify that the aforementioned determinations were issued during the month of February 2005. 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: March 2, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–993 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,065]

River Valley Contract Manufacturing, Inc., Menifee, AR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at River Valley Contract Manufacturing, Inc., Menifee, Arkansas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,065; River Valley Contract Manufacturing, Inc., Menifee, Arkansas (February 2, 2005)

Signed at Washington, DC this 16th day of February 2005.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–986 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–55,840]

Sun Microsystems, Inc., Restoration Services, Burlington, MA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Sun Microsystems, Inc., Restoration Services, Burlington, Massachusetts. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–55,840; Sun Microsystems, Inc., Restoration Services, Burlington, Massachusetts (February 2, 2005).

Signed in Washington, DC this 16th day of February, 2005.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–987 Filed 3–8–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–041]

NASA Advisory Council, Space Science Advisory Committee and Earth System Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC) and Earth System Science and Applications Advisory Committee (ESSAAC).

DATES: Wednesday, March 30, 2005, 8 a.m. to 5:30 p.m., Thursday, March 31, 2005, 8 a.m. to 5:30 p.m., and Friday, April 1, 2005, 8:30 a.m. to 11:30 a.m.

ADDRESSES: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Marian R. Norris, Science Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452 or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Agency Overview
—Science Mission Directorate Overview
—Subcommittee Reports
—Selective Programs Update
—Strategic Roadmapping Plans and Status
—Science Integration Discussion
—Capabilities Roadmaps
—Discussion and Report Development

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors to the meeting will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 05–4628 Filed 3–8–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice 05–040]

NASA Robotic and Human Exploration of Mars Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Robotic and Human Exploration of Mars Strategic Roadmap Committee.

DATES: Tuesday, March 29, 2005, 8 a.m. to 5 p.m., Wednesday, March 30, 2005, 8 a.m. to 5 pm.

ADDRESSES: University of Maryland, University College, 3501 University Blvd. East, Adelphi, MD 20783.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Meyer, (202) 358–0307.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

—Review of previous activities
—Summary of draft roadmap sections
—Discussion of contents of roadmap sections
—Summary and actions

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 05–4627 Filed 3–8–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Craig McCord, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5473.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Eileen B. Mason, Senior Deputy Chairman; Laurence M. Baden, Deputy Chairman for Management and Budget; Tony Chauveaux, Deputy Chairman for Grants and Awards; Ann Guthrie Hingston, Director of the Office of Government Affairs; Michael R. Burke, Chief Information Officer.

Murray R. Welsh,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. 05–4537 Filed 3–8–05; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by April 8, 2005. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Steven D. Emslie. Permit Application No. 2006–001. Department of Biological Sciences, University of North Carolina, Wilmington, NC 28403.

Activity for Which Permit Is Requested

Take, Enter Antarctic Specially Protected Areas, and import into the U.S.A. The applicant plans to collect sediments from abandoned and active penguin colonies by excavation of small soil pits, no larger than 1x1m in each area. In addition, organic remains of bones, tissues, feathers, eggshell fragments, otoliths, squid beaks and other pretty remains will be collected. The data from analysis of these items will be compared to the paleoclimatic record to investigate patterns in population fluctuations of penguins in relation to climate change in the past. This information, in addition to data on modern population changes with global warming, will test hypotheses on how penguins respond to climate change and will help develop a predictive model for future responses by these species to continued global warming.

The application also plans to salvage complete or partial specimens of modern penguins and other seabirds, but no more than 10 specimens per species, for identification and analysis. These specimens will remain at the University of North Carolina or other appropriate universities or museums for educational purposes and study.

Location

Antarctic Peninsula region, Ross Sea and Victoria Land coast, vicinity of McMurdo Sound, and the following Antarctic Specially Protected Areas on an opportunistic basis:

ASPA 102 Rookery Islands, Holme Bay
ASPSA 103 Ardery and Odbert Islands
ASPA 104 Sabrina Island, Balleny Island
ASPA 105 Beaufort Island
ASPA 106 Cape Hallett, Victoria Land
ASPA 107 Dion Islands
ASPA 108 Green Island, Berthelot Islands
ASPA 109 Moa Island, South Orkneys
ASPA 110 Lynch Island, South Orkneys
ASPA 111 Southern Powell Island and adjacent islands, South Orkneys
ASPA 112 Coppermine Peninsula, Robert Island
ASPA113 Litchfield Island, Arthur Harbor
ASPA 114 North Coronation Island
ASPA 115 Lagotellerie Island, Marguerite Bay

ASPA 116 New College Valley, Caughley Beach, Cape Bird
ASPA 117 Avian Island, northwest Marquerite Bay
ASPA 121 Cape Royds, Ross Island
ASPA 124 Cape Crozier, Ross Island
ASPA 125 Fildes Peninsula, King George Island, South Shetland Islands
ASPA 126 Byers Peninsula, Livingston Island
ASPA 127 Haswell Island
ASPA 128 Western shore of Admiraltry Bay, King George Island
ASPA 129 Rothera Point, Adelaide Island
ASPA 132 Potter Peninsula, King George Island
ASPA 133 Harmony Point, Nelson Island
ASPA 134 Cierva Point, Danco Coast
ASPA 135 Bailey Peninsula, Budd Coast
ASPA 136 Clark Peninsula, Budd Coast
ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago
ASPA 143 Marine Plain, Mule Peninsula, Vestfold Hills
ASPA 149 Cape Shirref, Livingston Island
ASPA 150 Ardley Island, King George Island
ASPA 151 Lions Rump, King George Island
ASPA 154 Cape Evans, Ross Island
ASPA 158 Cape Adare
ASPA 160 Botany Bay, Cape Geology, Victoria Land

Dates

January 1, 2006, to December 31, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 05–4535 Filed 3–8–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The Title of the Information Collection:* NRC Form 64, Travel Voucher (Part 1); NRC Form 64A, Travel Voucher (Part 2), Schedule of Expenses and Amount Claimed; and NRC Form 64B, Optional Travel Voucher (Part 2), Expense Report.

2. *Current OMB Approval Number:* 3150–0192.

3. *How Often the Collection Is Required:* On occasion.

4. *Who Is Required or Asked To Report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

5. *The Number of Annual Respondents:* 100.

6. *The Number of Hours Needed Annually To Complete the Requirement or Request:* 100 hours (1 hour per response).

7. *Abstract:* As a part of completing the travel process, the traveler must file travel reimbursement vouchers and trip reports. The respondent universe for the above forms include consultants and contractors and those who are invited by the NRC to travel, *e.g.*, prospective employees. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

Submit, by May 9, 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 (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at #301) 415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–4546 Filed 3–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, et al.; Catawba Nuclear Station, Units 1 and 2; Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration Renewed Facility Operating License Nos. NPF–35 and NPF–52, Amendment Nos. 220 and 215

The Nuclear Regulatory Commission (Commission) has issued Amendment No. 220 to Renewed Facility Operating License No. NPF–35 and Amendment No. 215 to Renewed Facility Operating License No. NPF–52, issued to Duke Energy Corporation, *et al.* (Duke, the licensee), which revised the Technical Specifications (TS) for operation of the Catawba Nuclear Station (Catawba), Units 1 and 2, located in York County, South Carolina. The amendment is effective as of the date of issuance.

The amendment modifies the TS to permit the usage of up to four mixed oxide (MOX) lead test assemblies (LTAs). Specifically, the amendment consists of: (1) A revision to TS 3.7.16 to permit storage of the MOX LTAs in the spent fuel pool; (2) a revision to TS 4.2, ''Reactor Core'' to include the four MOX LTAs using M5 fuel rod cladding; (3) TS 4.3, ''Fuel Storage,'' to reflect the enrichment of the MOX LTAs; and (4) a revision to TS 5.6.5 to add two supporting methodologies for the MOX LTAs. The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on

July 25, 2003 (68 FR 44107). A request for a hearing was filed on August 21 and 25, 2003, by the Nuclear Information and Resources Service (NIRS) and the Blue Ridge Environmental Defense League (BREDL), respectively. A Notice of Opportunity to Comment and Proposed No Significant Hazards Consideration Determination in connection with this action was published in the **Federal Register** on July 12, 2004 (69 FR 41852).

On July 14 and 15, 2004, the Atomic Safety and Licensing Board (ASLB) held a hearing on a single admitted safety-related contention by BREDL. All of NIRS's contentions were rejected and NIRS was not admitted as a party to the proceeding. The admitted contention was related to the adequacy of the loss-of-coolant accident analyses performed to support the use of the MOX LTAs. On December 22, 2004, the ASLB issued a Partial Initial Decision with respect to this matter finding that there is reasonable assurance that operation of Catawba with the four MOX LTAs will not endanger the health and safety of the public.

BREDL submitted its security-related safety contentions on March 3, 2004. An ASLB hearing on a single physical security-related contention, as admitted by the ASLB, was held January 11–14, 2005. This contention was related to the adequacy of the provisions undertaken by Duke to provide protection of the MOX LTAs. Findings and reply findings of fact and conclusions of law were filed in February 2005. An ASLB decision on the security contention is pending.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding or completion of any required hearing, where it has determined that no significant hazards considerations are involved.

The Commission has applied the standards of Title 10 of the *Code of Federal Regulations,* Section 50.92 and has made a final determination that the amendment involves no significant hazards considerations. The basis for this determination is contained in a Safety Evaluation and three Supplements to that Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any further hearing will be held after issuance.

The Commission has prepared an Environmental Assessment and one Supplement to the Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment and its supplement, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (69 FR 51112 and 70 FR 8849).

For further details with respect to the action see (1) the application for amendment dated February 27, 2003, as supplemented by letters dated September 15, September 23, October 1 (two letters), October 3 (two letters), November 3, November 4, December 10, 2003, and February 2, (two letters), March 1 (three letters), March 9 (two letters), March 16 (two letters), March 26, March 31, April 13, April 16, May 13, June 17, August 31, September 20, October 4, October 29 and December 10, 2004, (2) Amendment Nos. 220 and 215 to License Nos. NPF–35 and NPF–52, respectively, (3) the Commission's related Safety Evaluation and its three Supplements dated April 5, May 5, July 27, 2004, and March 3, 2005, respectively, and (4) the Commission's Environmental Assessment and its supplement (69 FR 51112 and 70 FR 8849, respectively). All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (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, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–4547 Filed 3–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, North Carolina Electric Membership Corporation, Saluda River Electric Cooperative, Inc., North Carolina Municipal Power Agency No. 1, Piedmont Municipal Power Agency, Catawba Nuclear Station, Units 1 and 2; Exemption

1.0 Background

Duke Energy Corporation, (the licensee) is the holder of Facility Operating License Nos. NPF–35 and NPF–52, which authorize operation of the Catawba Nuclear Station (Catawba), Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in York County, South Carolina.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, § 50.46, ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' and Appendix K, ''ECCS Evaluation Models,'' identify requirements for calculating ECCS performance for reactors containing fuel with Zircaloy or ZIRLO cladding, and uranium oxide fuel. Part 11 of 10 CFR, ''Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material [SNM],'' and 10 CFR part 73, ''Physical Protection of Plants and Materials,'' identify requirements that are usually applicable to fuel fabrication facilities for the protection of formula quantities of strategic special nuclear material (SSNM).

By letter dated February 27, 2003, as supplemented by letters dated September 15, September 23, October 1 (two letters), October 3 (two letters), November 3, November 4, December 10, 2003, and February 2 (two letters), March 1 (three letters), March 9 (two letters), March 16 (two letters), March 26, March 31, April 13, April 16, May 13, June 17, August 31, September 20, October 4, October 29, and December 10, 2004, the licensee requested exemptions from 10 CFR 50.46, Appendix K to 10 CFR part 50, and from certain physical security requirements of 10 CFR 11.11(a)(1)–(a)(2), 11.11(b), 10 CFR 73.45(d)(1)(iv), 73.46 (c)(1), 73.46(h)(3), 73.46(b)(3)–(b)(12),

73.46(d)(9), and 73.46(e)(3). These exemptions would allow Catawba to operate with up to four lead test assemblies (LTAs) that would use M5™ (M5) type fuel rod cladding and fuel rods containing mixed uranium and plutonium (Pu) oxide (MOX) fuel in non-limiting core locations. The purpose of the LTA effort at Catawba is to confirm that the MOX fuel performs as expected in a nuclear power reactor. This effort is part of the Department of Energy (DOE) Surplus Plutonium Disposition Project, an ongoing Pu disposition program of the United States and the Russian Federation. The goal of this non-proliferation program is to dispose of surplus Pu from nuclear weapons by converting the material into MOX fuel and using that fuel in nuclear power reactors.

3.0 Discussion of Part 50 Exemptions for M5 Cladding and MOX Fuel

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2), special circumstances include, among other things, when the application of the regulation would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46, and Appendix K to 10 CFR part 50, is to establish requirements for the calculation of ECCS performance, and acceptance criteria for that performance, in order to assure that the ECCS functions to transfer heat from the reactor core following a loss-of-coolant accident (LOCA), such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented, and (2) clad metal-water reaction is limited to specified amounts.

Cladding Exemption

The regulation in 10 CFR 50.46 contains acceptance criteria for ECCSs for reactors fueled with Zircaloy or ZIRLO cladding. In addition, paragraph I.A.5, ''Metal-Water Reaction Rate,'' of Appendix K to 10 CFR part 50, requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen generation, and cladding oxidation from the metal-water reaction. However, the Baker-Just equation assumes the use of Zircaloy clad fuel. Thus, an exemption from the requirements of 10 CFR 50.46, and Appendix K to 10 CFR part 50 is needed for Duke to irradiate the LTAs that include fuel rods clad with M5 material.

The licensee has performed evaluations of the fuel rod mechanical design using approved methods. No new or altered design limits need to be applied, nor are any required for this program for the purposes of 10 CFR part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 10, ''Reactor Design.'' The licensee has evaluated the areas of the mechanical design that could potentially be impacted by M5 cladding, namely, material properties, corrosion, internal rod pressures, fatigue, growth, rod bow, and thermal creep. The material properties of M5 cladding are similar in many respects to those of approved Zircaloy type cladding; those properties that differ have been evaluated by the NRC staff and found to be acceptable. The licensee determined that the M5 cladding had better corrosion performance than the Zircaloy-4 cladding, and compatible thermal creep. On this basis, the NRC staff finds that the use of M5 cladding for the mechanical design of the LTAs is acceptable, subject to appropriate implementation of the NRC staff-approved analysis methodology.

The licensee has performed evaluations of the nuclear design for a core using MOX LTAs. The licensee states that the MOX LTAs will not be positioned in the highest power locations. The licensee determined that the MOX LTA design features will not have a significant impact on the overall core nuclear design. In accordance with approved core reload analysis methodology, the licensee will confirm this conclusion for each reload. M5 cladding is very similar to Zircaloy-4 materials in chemical composition and neutronic properties; differences in these properties have previously been evaluated by the NRC staff. Approved licensee reload methodologies can be used to model the LTAs since the features of the LTAs do not challenge the validity of the standard methodologies. Given the limited number of LTAs to be installed, the installation in non-limiting locations, and the results of analyses using approved methodology, the NRC staff concludes that the LTA core nuclear design is acceptable for use at Catawba.

The licensee has performed evaluations of the core thermal-hydraulic design using approved methods. The design analyses covered the MOX LTA impact on the resident fuel (fuel in the core other than of the MOX design), including departure from nucleate boiling, pressure drop, assembly lift, and lateral flow. The results show that the resident fuel analyses will bound the MOX LTA performance. Thus, the licensee assures that the thermal-hydraulic design of a reactor core containing the resident Westinghouse fuel designs and the MOX LTA design will meet applicable requirements. The licensee has shown that MOX fuel heat transfer properties are very similar to low-enriched uranium (LEU) fuel properties and are capable of being modeled with currently approved codes. The NRC staff has confirmed that the licensee has evaluated the nuclear heat transfer properties and cooling requirements for the four MOX LTAs using approved codes and concludes that sufficient capability exists at Catawba to provide adequate core cooling. Based on the approved methodology and conservative analyses, the NRC staff concludes that the LTA thermal-hydraulic design has been adequately evaluated and is acceptable.

The licensee has performed a LOCA safety analysis using the approved methodology for LTAs with M5 cladding. Section 50.46 identifies acceptance criteria for ECCS performance at nuclear power plants. The material properties of M5 cladding are very similar to those of Zircaloy-4 materials. Because the current analyses are done with material properties that approximate Zircaloy-4 properties, the current ECCS analysis remains applicable and unchanged for the LTAs. Therefore, the NRC staff concludes that the ECCS performance at Catawba will not be adversely affected by the insertion of MOX LTAs. As such, the licensee has achieved the underlying purpose of 10 CFR 50.46. Therefore, special circumstances exist to grant an exemption from 10 CFR 50.46 to allow the use of M5 cladding.

Paragraph I.A.5 of Appendix K to 10 CFR part 50 states that the rates of energy release, hydrogen generation, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation assumes the use of Zircaloy-4 clad fuel, strict application of the rule would not permit use of the equation with M5 cladding for determining acceptable fuel performance. The underlying intent of paragraph I.A.5 of Appendix K to 10 CFR part 50, however, is to ensure that analysis of fuel response to LOCAs is conservatively calculated. As previously evaluated by the NRC staff in its approval of the M5 topical report, the application of the Baker-Just equation in the analysis of M5 clad fuel will

conservatively bound all post-LOCA scenarios. Thus, the underlying purpose of the rule will be met. Therefore, special circumstances exist to grant an exemption from Appendix K to 10 CFR part 50 that would allow the licensee to apply the Baker-Just equation to M5 cladding.

The NRC staff examined the licensee's rationale to support the exemption request and, for the reasons set forth above, concludes that MOX LTAs using M5 cladding will meet the underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50. Further, the NRC staff has determined that the use of M5 cladding will have no significant effect on current assessments of a metal-water reaction, and that the mechanical design of the LTAs would perform satisfactorily. Therefore, ECCS performance will not be adversely affected and complete application of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is not necessary to achieve the underlying purpose. Based upon the considerations above, the NRC staff concludes that, pursuant to 10 CFR 50.12(a)(2), the granting of an exemption to allow the use of M5 cladding is acceptable.

Fuel Exemption

With respect to the use of MOX fuel, the regulation in 10 CFR 50.46(a)(1)(I) contains acceptance criteria for ECCSs for reactors ''fueled with uranium oxide pellets.'' In addition, Appendix K to 10 CFR part 50 contains several references, including paragraph I.A.1, ''The Initial Stored Energy in the Fuel,'' that assume that only uranium dioxide fuel pellets are being used. Thus, an exemption from the requirements of 10 CFR 50.46(a)(1)(I) and Appendix K to 10 CFR part 50 is needed for the licensee to irradiate the LTAs that include fuel rods containing MOX fuel pellets. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50, paragraph I.A.1, is to establish acceptance criteria for ECCS performance and to ensure that the evaluation model contains provisions for conservatively assessing the amount of stored heat in the fuel at the onset of a postulated LOCA by adequately modeling the thermal conductivity of the fuel material and the fuel-to-cladding gap conductance. The thermal and material properties of MOX fuel have been evaluated using NRC staff-approved methods. The licensee has demonstrated that the MOX fuel properties are very similar to those of LEU fuel such that the differences in the Catawba ECCS performance arising from the MOX thermal and material properties are negligible. Therefore, the underlying purposes of Section 50.46 and paragraph I.A.1 of Appendix K to 10 CFR part 50 are achieved with the use of MOX fuel.

The licensee states that for each reload, it will perform reload analyses to confirm adequate ECCS performance, and show that the LTAs do not have a significant impact upon the analysis at Catawba. Because the LTAs contribute to the ECCS requirements in a very minor way, the current analyses will remain bounding for them. The MOX LTAs will be placed in core locations that will not experience the most limiting power peaking during any operating cycle. In each reload analysis, the licensee will verify that the peak cladding temperature (PCT) of the MOX LTAs is not the limiting PCT. Using the Baker-Just equation, the licensee will confirm that the local cladding oxidation of the LTAs will be conservatively predicted. In addition, the licensee will confirm that the maximum hydrogen generation will be unchanged with the inclusion of the LTAs. Therefore, a coolable geometry will be maintained following a LOCA. The MOX LTAs meet the same design requirements as the resident fuel for Catawba. No safety limits or setpoints have been altered as a result of the use of the LTAs. On these bases, the NRC staff finds that the complete application of 10 CFR 50.46 and Appendix K to 10 CFR part 50 for MOX fuel is not necessary to achieve the underlying purpose of the rule. Accordingly, the NRC staff concludes that it is acceptable to grant an exemption from the requirements of 10 CFR 50.46, and Appendix K to 10 CFR part 50 for LTAs using MOX fuel at Catawba.

4.0 F Conclusion for Part 50 Exemptions for M5 Cladding and MOX Fuel

For the reasons set forth above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, as described above, are present. Therefore, the Commission hereby grants Duke Energy Corporation an exemption from the requirements of 10 CFR 50.46(a)(1)(I), and Appendix K to 10 CFR part 50, with respect to the use of M5 cladding and MOX fuel at Catawba.

5.0 Discussion of Part 11 and Part 73 Exemptions

Pursuant to 10 CFR 11.9, ''Specific exemptions,'' the Commission may, upon application by any interested party, grant exemptions from the requirements of 10 CFR part 11, ''Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material,'' when the exemptions are authorized by law and will not constitute an undue risk to the common defense and security. Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application by any interested person or on its own initiative, grant exemptions from the requirements of 10 CFR part 73, ''Physical Protection of Plants and Materials,'' when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Duke Energy has requested relief from certain regulations in 10 CFR part 11 and 10 CFR part 73. The licensee request for exemptions from part 11 was evaluated against the standard specified in 10 CFR 11.9, while the request for exemptions from part 73 was evaluated against the standard specified in 10 CFR 73.5.

The NRC staff reviewed the proposed exemptions using the information provided in the Duke Energy Corporation license amendment request; Revision 16 of the *Duke Power Company Nuclear Security and Contingency Plan* (Physical Security Plan (PSP)), Section 13.3; and the Duke responses to NRC staff requests for additional information (RAI). To determine whether the specific exemptions should be granted, the NRC staff utilized the criteria specified in the *Review Plan for Evaluating the Physical Security Protection Measures Needed for Mixed Oxide Fuel and Its Use in Commercial Nuclear Power Reactors,* dated January 29, 2004. The NRC staff review was consistent with the Commission Memorandum and Order, CLI–04–06, dated February 18, 2004. The NRC staff assumed as a baseline that the Catawba facility will comply with all applicable general security requirements, both those prescribed in NRC rules and those prescribed by NRC order. Specifically, the NRC staff reviewed the appropriate heightening of security measures necessitated by the proposed presence of MOX LTAs at the Catawba Nuclear Power Station.

The underlying purpose of 10 CFR part 11 is to establish the requirement for access authorization. Part 11 requires licensees possessing a formula quantity of SNM that is subject to the requirements of 10 CFR part 73 to identify personnel requiring NRC–U or NRC–R access authorizations. A formula quantity of SSNM, as defined in 10 CFR part 73, includes MOX LTA fuel. An

exemption is provided by 10 CFR 73.6, in part, from Sections 73.45 and 73.46 for the categories of material defined therein, which include conventional LEU fuel (enriched to less than 20 percent in U–235). Accordingly, the licensee is not subject to the requirements of 10 CFR 11.11 for the use of LEU fuel. However, since there is no comparable exclusion in Section 73.6 for fuel initially containing a small concentration of plutonium, the requirements of 10 CFR 11.11 become applicable to the licensee for the use of MOX, unless an exemption is granted pursuant to 10 CFR 11.9.

The NRC staff has found that the MOX material, while technically meeting the criteria of a formula quantity, is not attractive to potential adversaries from a proliferation standpoint due to its low Pu concentration, composition, and form (size and weight). The MOX fuel consists of Pu oxide particles dispersed in a ceramic matrix of depleted uranium oxide with a Pu concentration of less than six weight percent. The MOX LTAs will consist of conventional fuel assemblies designed for a commercial light-water power reactor that are over 12 feet long and weigh approximately 1500 pounds. On these bases, the NRC staff finds that the complete application of 10 CFR 11.11 is not necessary, and the exemption is authorized by law and will not constitute an undue risk to the common defense and security. Accordingly, pursuant to 10 CFR 11.9, based upon the physical characteristics of the MOX LTAs and the proposed additional protective measures, the NRC staff concludes that it is acceptable to grant an exemption from the requirements of 10 CFR 11.11(a)(1)–(a)(2), and 11.11(b).

The underlying purpose of 10 CFR part 73 is to prescribe requirements for the establishment and maintenance of a physical protection system that will have capabilities for the protection of SSNM at fixed sites and in transit. As noted above, an exemption is provided by Section 73.6 for the licensee in its use of conventional LEU fuel enriched to less than 20 percent U–235, but not for fresh MOX fuel containing Pu. The NRC staff found that the MOX material, while technically meeting the criteria of a formula quantity, is not attractive to potential adversaries from a proliferation standpoint due to its low Pu concentration, composition, and form (size and weight). The MOX fuel consists of Pu oxide particles dispersed in a ceramic matrix of depleted uranium oxide with a Pu concentration of less than six weight percent. The MOX LTAs will consist of conventional fuel assemblies designed for a commercial light-water power reactor that are over 12 feet long and weigh approximately 1500 pounds. A large quantity of MOX fuel and an elaborate extraction process would be required to yield enough material for use in an improvised nuclear device or weapon. On these bases, the NRC staff finds that the complete application of 10 CFR 73.45(d)(1)(iv), 73.46(c)(1), 73.46(h)(3), 73.46(b)(3)–(b)(12), 73.46(d)(9), and 73.46(e)(3) for MOX fuel is not necessary and that the exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Accordingly, based on the physical characteristics of the MOX LTAs and the proposed additional protective measures, the NRC staff, pursuant to 10 CFR 73.5, concludes that it is acceptable to grant an exemption from these portions of 10 CFR part 73.

6.0 Conclusion for Part 11 and Part 73 Exemptions

For the reasons set forth above, the Commission has determined that, pursuant to 10 CFR 11.9, the requested exemptions are authorized by law and will not constitute an undue risk to the common defense and security. In addition, pursuant to 10 CFR 73.5, the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Therefore, the Commission hereby grants Duke Energy Corporation the requested exemptions from the requirements of 10 CFR 11.11(a)(1)–(a)(2), 10 CFR 11.11(b), and 10 CFR 73.45(d)(1)(iv), 73.46(c)(1), 73.46(h)(3), 73.46(b)(3)–(b)(12), 73.46(d)(9), and 73.46(e)(3).

7.0 Environmental Evaluation

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 51112 and 70 FR 8849).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–4548 Filed 3–8–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25]

Foster Wheeler Environmental Corporation, Idaho Spent Fuel Facility; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment.

FOR FURTHER INFORMATION CONTACT: James R. Hall, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–8500; fax number: (301) 425–8555; e-mail: *jrh@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.70(a)(1) to the Foster Wheeler Environmental Corporation (FWENC or licensee). This regulation requires that each specific licensee under 10 CFR part 72 submit an original Final Safety Analysis Report (FSAR) to the Commission within 90 days after issuance of the license. The NRC granted a license for the Idaho Spent Fuel (ISF) Facility, an independent spent fuel storage installation (ISFSI) to be located at the Idaho National Engineering and Environmental Laboratory (INEEL), to FWENC on November 30, 2004. The requested exemption would allow FWENC to submit an original FSAR for the ISF Facility no later than August 28, 2005, or no later than 30 days prior to the commencement of construction, whichever comes first. FWENC submitted the exemption request on February 2, 2005.

Environmental Assessment (EA)

Identification of Proposed Action: The licensee requested an exemption from the requirement in 10 CFR 72.70(a)(1), which states that each licensee shall submit an original FSAR to the Commission, in accordance with 10 CFR 72.4, within 90 days after issuance of the license. The requested exemption would allow the licensee to delay the submittal of the original FSAR for the ISF Facility by up to 6 months (no later than August 28, 2005, or 30 days prior to commencement of construction, whichever comes first).

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action: The NRC granted a license to construct and operate the ISF Facility to FWENC on November 30, 2004. FWENC will build and operate the facility under a contract with the U. S. Department of Energy (DOE). The ISF Facility represents an additional milestone in the 1995 settlement agreement among DOE, the U.S. Navy, and the State of Idaho regarding the disposition of spent nuclear fuel at INEEL.

The exemption would allow the licensee additional time to submit an original FSAR beyond February 28, 2005, which is 90 days from the date the facility license was issued. As part of its justification for the exemption request, FWENC indicated that it has held recent discussions with DOE to determine whether the FSAR and related documents contain sensitive information that should be withheld from public disclosure. These discussions were prompted in part by recent NRC actions to reassess its policy and practices on release of sensitive information; however, the NRC has not yet provided any new direction to licensees on this subject. FWENC has not yet made its determination, but it may need to expend more resources and/or time to prepare the FSAR and associated justifications if it elects to request that parts of the document be withheld. In order to allow it more time to identify what parts of the FSAR, if any, are to be withheld, to prepare the necessary justifications, and to revise the document accordingly, the licensee has requested the subject exemption.

Environmental Impacts of the Proposed Action: The NRC staff previously evaluated the environmental impacts resulting from the construction, operation and decommissioning of the ISF Facility, and determined that such impacts would be acceptably small. The staff's conclusions are documented in the ''Environmental Impact Statement (EIS) for the Proposed Idaho Spent Fuel Facility at the Idaho National Engineering and Environmental Laboratory in Butte County, Idaho (Final Report), NUREG–1773,'' issued in January 2004. The proposed action under consideration would not change the staff's previous conclusions in the EIS regarding environmental impacts, because the proposed exemption is an administrative action that will not affect the physical design or operation of the ISF Facility. Therefore, there are no radiological or non-radiological impacts from a delay in submitting the FSAR, and the staff finds that the proposed exemption will not have any significant environmental impact.

Alternative to the Proposed Action: As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Approval or denial of the exemption request would result in no change in the environmental impacts described in the staff's final EIS. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Consulted: On February 17, 2005, Mr. Doug Walker, Senior Health Physicist with the State of Idaho INEEL Oversight Program, was contacted regarding the environmental assessment for the proposed exemption and had no comments. The NRC staff previously evaluated the environmental impacts of the ISF Facility in the final EIS issued in January 2004, and has determined that additional consultation under Section 7 of the Endangered Species Act is not required for this specific exemption which involves administrative reporting requirements and will not affect listed species or critical habitat. The NRC staff has similarly determined that the proposed exemption is not a type of activity having the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion: The staff has reviewed the exemption request submitted by FWENC and has determined that allowing the licensee to delay the submittal of the original Final Safety Analysis Report for the ISF Facility up to an additional 6 months beyond the date required by 10 CFR 72.70(a)(1) is an administrative change, and would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.70(a)(1), so that FWENC may delay the submittal of the original FSAR for the ISF Facility, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that a Finding of No Significant Impact is appropriate, and that an environmental impact statement for the proposed exemption is not necessary.

For further details with respect to this action, see the FWENC request for exemption, dated February 2, 2005, which was docketed under 10 CFR part 72, Docket No. 72–25. This document is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). This document may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of March, 2005.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4549 Filed 3–8–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the Acquisition Advisory Panel established in accordance with the Services Acquisition Reform Act of 2003 will meet on March 30, 2005 and again on April 19, 2005 at 9 a.m., eastern time. Location for the March 30, 2005 meeting will be the General Services Administration (GSA) Auditorium at 1800 F. Street, NW., Washington, DC 20405. While the meeting is open to the public, building security requires you to provide your name to the Designated Federal Officer (DFO) (contact information listed below) by March 28, 2005. You will need photo identification to enter the building. Location for the April 19, 2005 meeting is expected to be the Federal Deposit Insurance Corporation (FDIC) basement auditorium, 801 17th Street NW., Washington DC 20434. While this meeting is open to the public, building security requires that you provide your

name to the DFO by April 14, 2005. Confirm the location of the April 19th meeting by visiting the Panel's Web site at *http://www.acqnet.gov/aap.* Confirmation is expected to be posted by March 21, 2005. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. The Panel established the following five working groups during its February 28, 2005 meeting: Commercial Practices/Commercial Items; Performance-based Contracting; Governmentwide Contracts and Interagency Contract Vehicles; Cross-cutting Issues—Small Business, and; Cross-cutting Issues—Federal Workforce. The working groups will report on their initial progress during the March 30th, 2005 meeting, which may also include any follow-up recommendations for additional working groups or other issues to be examined. The April 19th meeting will cover any significant updates as well as discussions related to the topics of each of the working groups. The public may obtain copies of Initial Working Group Issues for the Commercial Practices, Governmentwide Contracts and Interagency Contract Vehicles, Performance-based Contracting, and Cross-cutting Issues—Federal Workforce working groups at the Panel's Web site under Working Groups at *http://www.acqnet.gov/aap.*

In addition to discussions related to these working groups, the Panel has also invited presentations from specific individuals in the private sector on commercial practices during the March 30th meeting and individuals from both the public and private sectors during the April 19th meeting. These presentations will focus on a number of issues including, but not limited to commercial practices/techniques for the use of time and materials or labor hour contracts, share-in-savings contracts, best value procurements, use of firm-fixed price contracts or task orders for services, competition for services contracts and task orders, including information technology and business process services, and the development of requirements for services procurements. A draft agenda will be posted at the Panel's Web site at *http://www.acqnet.gov/aap* prior to each meeting. While these two meetings will include presentations by invitation only, the general public will be given the opportunity to provide oral statements to the Panel at a subsequent meeting to be announced in the **Federal Register**. The Panel also seeks written public statements of any length specifically related to the working group topics. Although the Panel accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received by the DFO at least five business days prior to the meeting date so that the written comments may be made available to the Panel for their consideration. Written comments should be supplied, electronically if possible, to the DFO at the e-mail address (or for hardcopies, mailing address) noted below. Acceptable electronic formats include Adobe Acrobat, Microsoft Word, Rich Text files in IBM–PC/Windows 98/2000/XP format. Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

SUPPLEMENTARY INFORMATION: The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. Interested parties are invited to attend the meetings.

Meeting Accommodations

Individuals requiring special accommodation to access the public meeting listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Requests for additional information or written statements should be directed to Laura Auletta, Designated Federal Officer (DFO), at *laura.auletta@gsa.gov* or (202) 208–7279, General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC 20405.

Laura Auletta,

Designated Federal Officer (Executive Director).

[FR Doc. 05–4716 Filed 3–8–05; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: March 22, 2005, Washington, DC. The meeting will be held in the East Room (Lobby Level) of the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Type of Meeting: Open. Further details on the meeting agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Proposed Schedule and Agenda:

The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday March 22, 2005, at approximately 12:30 p.m. The PCAST is tentatively scheduled to: (1) Pursuant to its designation as the National Nanotechnology Advisory Panel under the 21st Century Nanotechnology Research and Development Act, discuss a draft report assessing Federal nanotechnology programs and, pending the discussion, approve the report; and (2) discuss new topics areas to examine in the coming year. This session will end at approximately 5 p.m. Additional information on the agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Public Comments: There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–7116, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please call Stan Sokul at (202) 456–7116, prior to 3 p.m. on Friday, March 18, 2005. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology

policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Stanley S. Sokul,

Executive Director, PCAST, Office of Science and Technology Policy.

[FR Doc. 05–4610 Filed 3–8–05; 8:45 am]

BILLING CODE 3170–W4–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–04364]

Issuer Delisting; Notice of Application of Ryder System, Inc. To Withdraw Its Common Stock, $.50 par value, From Listing and Registration on the Chicago Stock Exchange, Incorporated

March 2, 2005.

On February 11, 2005, Ryder System, Inc., a Florida corporation (''Issuer''), filed an application with the Securities and Exchange Commission (Commission), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.50 par value (''Security''), from listing and registration on the Chicago Stock Exchange Incorporated (''CHX'').

The Board of Directors of the Issuer approved a resolution on July 16, 2004 to withdraw the Security from listing on CHX. The Issuer stated that the reasons for the Board's decision to withdraw the Security from CHX are the historically modest trading activity on CHX, the annual expense, and administrative burden. The Issuer states that the Security is currently listed, and will continue to list, on the New York Stock Exchange (''NYSE'').

The Issuer stated in its application that it has complied with applicable rules of CHX, including Article XXVII, Rule 4, by complying with all applicable laws in effect in the State of Florida and by providing CHX with the required documents governing the removal of securities from listing and registration on CHX. The Issuer's application relates solely to the withdrawal of the Security from listing on CHX and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before March 28, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–04364; or

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 1–04364. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–975 Filed 3–8–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933, Release No. 8549/March 3, 2005 and Securities Exchange Act of 1934, Release No. 51312/March 3, 2005]

Order Regarding Review of FASB Accounting Support Fee for Calendar Year 2005 Under the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the ''Act'') establishes criteria that must be met in order for the accounting standards established by an accounting standard-setting body to be recognized as ''generally accepted'' for purposes of the federal securities laws. Section 109 of the Act provides that all of the budget of an accounting standard-setting body satisfying these criteria shall be payable from an annual accounting support fee assessed and collected against issuers, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f), the annual accounting support fee shall not exceed the amount of the standard setter's ''recoverable budget expenses,'' which may include operating, capital and accrued items. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation (''FAF''), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' under Section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2005. In connection with its review, the Commission also reviewed the proposed budget for the FAF and the FASB for calendar year 2005.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In

[1] Financial Reporting Release No. 70.

this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Government Accounting Standards Board (''GASB''), the FASB's sister organization, which sets accounting standards to be used by state and local government entities. The FAF has advised the Commission that none of the FAF, the FASB and the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2005 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered pursuant to Section 109 of the Act that the FASB may act in accordance with this determination of the Commission.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–983 Filed 3–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51292; File No. S7–24–89]

Joint Industry Plan; Order Extending for One Year the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the Pacific Exchange, Inc., the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc., and to Extend Certain Exemptive Relief

March 2, 2005.

I. Introduction and Description

On December 14, 2004, the Pacific Exchange, Inc. (''PCX'') on behalf of itself and the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''),[1] and the Philadelphia Stock Exchange, Inc. (''Phlx'') (hereinafter referred to collectively as ''Participants''),[2] as members of the operating committee (''Operating Committee'' or ''Committee'') of the Plan submitted to the Securities and Exchange Commission (''Commission'') a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.[3] On December 14, 2004, the Commission issued a notice for comment and simultaneously granted summary effectiveness to the request to extend the operation of the Plan and certain exemptive relief on a temporary basis not to exceed 120 days from December 21, 2004.[4] No comments were received in response to the publication of this notice.

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq Stock Market, Inc. (''Nasdaq'') securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities. The Plan is operating subject to a temporary extension.

This order approves, pursuant to Rule 11Aa3–2(c)(2) under the Securities Exchange Act of 1934 (''Act''),[5] the request to extend operation of the Plan, as modified by all changes previously approved, and the request to extend certain exemptive relief for a one-year period expiring on December 21, 2005.

II. Exemptive Relief

While both Nasdaq and the NASD operate under the umbrella of a single Plan Participant, the submission of two distinct best bids and offers (''BBOs'') could be deemed inconsistent with Section VI.C.1 of the Plan.[6] Pursuant to the 13th Amendment of the Plan and Rule 11Aa3–2(a),[7] Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Plan's Securities Information Processor (''SIP'') in a manner different than specified in Section VI.C.1. of the Plan and, thus, potentially in conflict with Rule 11Aa3–2(d) under the Act.[8]

As discussed at length in the notice of the 13th Amendment,[9] the Commission determined to relieve the potential conflict among the SuperMontage approval order,[10] Rule 11Aa3–2,[11] and the Plan, by granting the NASD an exemption under Rule 11Aa3–2(f)[12] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d)[13] until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of the exemptive relief.

III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)[14] and Section 11A(a)(1)[15] of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.[16] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, ''having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets,'' and cites as an objective of that system the ''fair competition * * *

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[1] The Commission notes that the CSE changed its name to the National Stock Exchange, Inc. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR–CSE–2003–12).

[2] PCX and its subsidiary the Archipelago Exchange were elected co-chairs of the operating committee (''Operating Committee'' or ''Committee'') for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants.

[3] *See* letter from Bridget M. Farrell, Co-Chairman, and Michael P. Rountree, Co-Chairman, Plan Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated December 14, 2004.

[4] *See* Securities Exchange Act Release No. 50855, 69 FR 76499 (December 21, 2004).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] Section VI.C.1. of the Plan, as approved in the 13th Amendment, states that ''[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD * * *.

[7] 17 CFR 240.11Aa3–2(a).

[8] 17 CFR 240.11Aa3–2(d). Rule 11Aa3–2(d) under the Act requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

[9] *See* Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002).

[10] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[11] 17 CFR 240.11Aa3–2.

[12] 17 CFR 240.11Aa3–2(f).

[13] 17 CFR 240.11Aa3–2(d).

[14] 15 U.S.C. 78*l*(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

[15] 15 U.S.C. 78k–1(a)(1).

[16] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

between exchange markets and markets other than exchange markets.'' [17] When the Commission first approved of the Plan on a pilot basis, it found that the Plan ''should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading.'' [18] The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan for a year furthers the goals described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to extend the exemption under Rule 11Aa3–2(f) [19] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d).[20] The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in Sections 12(f) and 11A of the Act [21] and Rules 11Aa3–1 and 11Aa3–2 thereunder.[22] The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan.

IV. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act [23] and paragraph (c)(4) of Rule 11Aa3–2 [24] thereunder, that the operation of the Plan be, and hereby is, extended and that certain exemptive relief also be extended until December 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–984 Filed 3–8–05; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78k–1(a).

[18] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[19] 17 CFR 240.11Aa3–2(f).

[20] 17 CFR 240.11Aa3–2(d).

[21] 15 U.S.C. 78*l*(f) and 15 U.S.C. 78k–1.

[22] 17 CFR 240.11Aa3–1 and 11Aa3–2.

[23] 15 U.S.C. 78*l*(f) and 15 U.S.C. 78k–1.

[24] 17 CFR 240.11Aa3–2(c)(4).

[25] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 14, 2005:

Closed Meetings will be held on Monday, March 14, 2005 at 3:30 p.m. and Thursday, March 17, 2005 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the Closed Meeting scheduled for Monday, March 14, 2005, will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, March 17, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature; and an Opinion.

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: March 7, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–4781 Filed 3–7–05; 4:04 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933, Release No. 8550/ March 3, 2005 and Securities Exchange Act of 1934, Release No. 51313/ March 3, 2005]

Order Approving Public Company Accounting Oversight Board Revised Budget and Annual Accounting Support Fee for Calendar Year 2005

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act. Under Section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission.

The PCAOB originally adopted a budget for calendar year 2005 and submitted it to the Commission in October 2004. After further review of its proposed expenditures for 2005, the PCAOB adopted a revised budget for calendar year 2005 and submitted that budget to the Commission for approval on January 6, 2005. In its supporting materials, the PCAOB noted that the revised budget ''supports its mission to oversee the auditors of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair and independent audit reports. This includes carrying out the

PCAOB's core functions of registration, inspection, enforcement, and standards-setting.''

In accordance with its responsibilities to oversee the PCAOB, the Commission reviewed both the original and revised budgets filed by the PCAOB for 2005 and its aggregate accounting support fee for 2005, which will fund the PCAOB's expenditures. During the course of the Commission's review, among other things, the Commission staff reviewed and relied upon representations and supporting documentation from the PCAOB.

The Commission did not identify any proposed disbursements in the revised budget that are not properly recoverable through the annual accounting support fee, and the Commission believes that the revised aggregate proposed 2005 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2005.

The Commission recognizes that the PCAOB is continuing to develop its infrastructure and will be increasing its staffing levels significantly in 2005 in order to fulfill its responsibilities under the Act. However, during the next budget cycle, the PCAOB will have substantially completed its start-up activities and finished a full year of inspections, including inspections of the eight largest registered public accounting firms and a number of smaller registered public accounting firms. As the PCAOB already has agreed, prior to the Commission's review of the 2006 PCAOB budget, the Commission expects to have received: (i) The PCAOB's long-range strategic plan for its operations and budget, (ii) a self-assessment of its internal controls for its operations and budget, and (iii) a briefing regarding the Commission's initial inspection of the PCAOB, as contemplated by Section 107(a) of the Act, in order to enable the Commission to assess whether the PCAOB is fulfilling its statutory responsibilities. Because of the specialized subject matter of the PCAOB's operations, we expect that the Commission's examinations of the PCAOB will draw on the expertise of several offices within the Commission, including the Office of Compliance, Inspections and Examinations and the Office of the Chief Accountant. Together, these offices will ensure that the Commission's examinations of the PCAOB are tailored to its specific operations.

Based on the foregoing, the Commission has determined that the PCAOB's revised 2005 budget and annual accounting support fee are consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2005 are approved.

By the Commission.

L. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–982 Filed 3–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51300; File No. SR–PCX–2005–24]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to PCXE Rules 4.5 and 6.18(d), Relating to Compliance Date for the Series 24 and Series 27 Examination Requirements for ETP Holders

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCXE. PCXE filed this proposal pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCXE proposes to amend PCXE Rule 4.5 to extend the compliance deadline for financial/operations principals of PCXE ETP firms to successfully complete the National Association of Securities Dealers, Inc.'s (''NASD'') Financial and Operations Principal Examination (''Series 27 Examination'') until September 30, 2005. PCXE also proposes to amend PCXE Rule 6.18(d) to extend the deadline for compliance supervisors of PCXE ETP firms to successfully complete the NASD's General Securities Principal Examination (''Series 24 Examination'') until September 30, 2005. The text of the proposed rule change is available on PCX's web site (*http://www.pacificex.com/legal/legal_pending.html*), at the PCX'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, PCXE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. PCXE 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 Commission recently approved a rule proposal by the Exchange to amend PCXE Rule 4.5 and add PCXE Rule 6.18(d) to require all financial/operations principals of PCXE Equity Trading Permit Holders (''ETP'') Firms to successfully complete the Series 27 Examination and to require all compliance supervisors of PCXE ETP Firms to successfully complete the Series 24 Examination.[5] Both rules contained compliance deadlines of March 31, 2005. The purpose of this filing is to extend the compliance deadline until September 30, 2005. For ETP Holders to become compliant with the approved rules they either need to study for and pass the Series 24 and 27 Examinations or hire individuals who have already passed these examinations. The Commission approved these rules on January 14, 2005 and the notice approving these rules appeared in the **Federal Register** on January 24, 2005.[6] The Exchange believes that providing ETP Holders with only two months time to become compliant with the recently approved rules is neither sufficient nor practical. In addition, the Exchange underestimated the number of ETP Holders who would be affected by this rule change as well as the impact it would have on all ETP Holders, especially the smaller ETP Holders. Therefore, extending the compliance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

[5] *See* Securities Exchange Act Release No. 51038 (January 14, 2005), 70 FR 03417 (January 24, 2005) (SR–PCX–2004–96).

[6] *See supra* note 5.

deadline until September 30, 2005 is necessary to give ETP Holders a reasonable amount of time come into compliance with the new rules.

2. Statutory Basis

PCXE believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and further the objectives of Section 6(b)(5) of the Act [8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCXE 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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(3) [10] thereunder because it constitutes a stated policy with respect to the enforcement of an existing rule of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–PCX–2005–24 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–PCX–2005–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal 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 Number SR–PCX–2005–24 and should be submitted on or before March 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–977 Filed 3–8–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51302; File No. SR–Phlx–2005–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees for Data Provided to Streaming Quote Traders Trading Options on the Exchange's Electronic Trading Platform, Phlx XL

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 28, 2005, 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 proposed rule change has been filed by the Phlx as establishing or changing a due, fee, or other change, pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) [4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its fee schedule relating to its electronic trading platform for options, Phlx XL.[5] Specifically, the Exchange proposes to establish charges applicable to Exchange Registered Options Traders (''ROTs'') that submit proprietary electronic quotations (''streaming quotes'').[6]

The Exchange has determined to charge SQTs a 100% pass-through charge relating to costs borne by the Exchange for data it will provide to SQTs who desire to obtain real-time underlying data to enable them to price the overlying options (known as ''Hyperfeed'' costs) [7] in addition to any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004) (SR–Phlx–2003–59).

[6] Such ROTs are known as Streaming Quote Traders (''SQTs''). *See* Exchange Rule 1014(b).

[7] SQTs trading options on Phlx XL generally use handheld devices for the purpose of streaming quotations in options in which they are assigned. The Exchange does not supply the handheld devices; SQTs generally obtain the handheld

other applicable fees.[8] The 100% pass-through charge will be implemented beginning on February 1, 2005.

The text of the proposed rule change is available on Phlx's website (*http://www.phlx.com*), at the Phlx'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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt fees relating to Phlx XL to reflect the expiration of a pilot program under which the Exchange absorbed 50% of the Hyperfeed costs for data it supplied to SQTs.[9] The pilot program was intended to recoup 50% of the costs borne by the Exchange for data supplied by the Exchange to SQTs in connection with Phlx XL. The purpose of the instant proposal is to recoup 100% of the costs borne by the Exchange for such data.[10] The Exchange believes that the 100% pass-through cost applicable to SQTs is an appropriate fee for data provided by the Exchange to SQTs.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees, and charges is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members functioning as SQTs.

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] and Rule 19b–4(f)(2) [14] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send E-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–09 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–2005–09. 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 the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–09 and should be submitted on or before March 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–976 Filed 3–8–05; 8:45 am]

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devices from one of several Exchange-approved vendors. Some vendors provide underlying data to the SQT who uses their handheld as a service to enable such SQT to price overlying options, while other vendors do not. The Exchange provides such underlying data, obtained from a third-party service provider, to those SQTs whose vendors do not provide such data as part of the service they provide to the SQT. The proposed Hyperfeed fee represents a pass-through of 100% of the costs borne by the Exchange in obtaining and providing such data to such SQTs.

[8] SQTs will also pay any Exchange transaction-related fees as well as non transaction-related fees and membership-related fees, when applicable, such as trading post/booth, floor facility, shelf space and permit fees.

[9] *See* Securities Exchange Act Release No. 50332 (September 9, 2004), 69 FR 55858 (September 16, 2004) (SR–Phlx–2004–49) (implementing the 50% pass-through cost on a 180-day pilot basis, to expire January 28, 2005).

[10] The Commission notes that the Phlx pilot program, which implemented a 50% pass-through charge for SQTs, expired on January 28, 2005 and the instant proposal is effective starting on February 1, 2005. Thus, the Phlx did not account for January 31, 2005 when it implemented the 50% and 100% pass-through charges for SQTs. Accordingly, the Exchange has represented that it will assess SQTs a pass-through charge for only 19 of the 20 business days in January 2005. This prorated amount will reflect the exclusion of any pass-through charge for January 31, 2005. Telephone conversation between Richard Rudolph, Director and Counsel, Phlx, Marc McKayle, Special Counsel, and A. Michael Pierson, Attorney, Division of Market Regulation, Commission, on March 1, 2005.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration's National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or interested others. The conference call will take place on Tuesday, March 15, 2005, at 1 p.m. eastern standard time. The call in number is 1–866–740–1260 and the pass code is 3761101.

Anyone wishing to make an oral presentation to the Board must contact Dionna Martin, Senior Program Manager, U.S. Small Business Administration, Office of Small Business Development Center, 409 3rd Street, SW., Washington, DC 20416, telephone: (202) 205–7042; fax (202) 481–1671.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–4550 Filed 3–8–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4916]

Comprehensive Environmental Evaluations for Antarctic Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State gives notice of the availability of two draft Comprehensive Environmental Evaluations (CEEs) for activities proposed to be undertaken in Antarctica. Interested members of the public are invited to submit comments relative to these CEEs.

DATES: Comments must be submitted on or before June 3, 2005.

ADDRESSES: Send comments to OES/OA, Room 5805; Department of State; Washington, DC 20520, or to *SaturniFM@state.gov*.

FOR FURTHER INFORMATION CONTACT: Fabio M. Saturni, Office of Oceans Affairs, (202) 647–0237.

SUPPLEMENTARY INFORMATION: Article 3 of Annex I to the Protocol on Environmental Protection to the Antarctic Treaty requires the preparation of a CEE for any proposed Antarctic activity likely to have more than a minor or transitory impact. Draft CEEs are to be made publicly available with a 90-day period for receipt of comments. This notice is published pursuant to 16 U.S.C. 2403a(h).

The Department of State has received two draft CEEs:

1. Germany has submitted a draft CEE entitled ''Rebuild and Operation of the Wintering Station Neumayer III and Retrogradation of the Present Neumayer II.'' The document is available at the following Web site: *http://www.awi-bremerhaven.de/Polar/Neumayer_StationIII-e.html*.

2. The United Kingdom has submitted a draft CEE entitled ''Proposed Construction and Operation of Halley VI Research Station, Brunt Ice Shelf, Antarctica.'' The document is available at the following Web site: *http://www.antarctica.ac.uk/halleyvi/cee.html*.

The Department of State invites interested members of the public to provide written comments on these draft CEEs.

Dated: March 3, 2005.

Raymond V. Arnaudo,

Deputy Director, Office of Oceans Affairs, Department of State.

[FR Doc. 05–4619 Filed 3–8–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–1998–3648]

Agency Information Collection; Other Than Those Contained in Proposed Rules or in Current Rules; Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs)

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) amendment of its Americans with Disabilities Act and Final Rule on Accessibility of Over-the-Road Buses.

DATES: Comments on this notice must be received by May 9, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST–1998–3648. 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–40, Washington, DC 20590–001.
- *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 on 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 (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda A. Lasley, Attorney-Advisor, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4723.

SUPPLEMENTARY INFORMATION:

Title: Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs).

OMB Number: 2100–0019.

Type of Request: Extension of a currently approved collection.

Affected Public: Bus companies and the disability community.

Abstract: The Department of Transportation (DOT), in conjunction with the U.S. Architectural and Transportation Barriers Compliance Board, issued final access regulations for privately-operated over-the-road buses (OTRBs) as required by the Americans with Disability Act (ADA) of 1990. The final rule has four different recordkeeping/reporting requirements. The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation. The third has to do with reporting information on ridership on

accessible fixed-route buses. The fourth has to do with reporting information on the purchase and lease of accessible and inaccessible new and used buses. The purpose of the information collection requirements is to provide data that the Department can use in its regulatory review and to assist the Department in its oversight of compliance by bus companies.

Respondents: Charter/tour service operators, fixed route companies, small mixed service operators.

Estimated Number of Respondents: 3,448.

Average Annual Burden Per Respondent: Variable.

Estimated Total Burden on Respondents: 316,226 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on March 3, 2005.

Robert Ashby,

Deputy Assistant General, Counsel for Regulation and Enforcement.

[FR Doc. 05–4604 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Austin Straubel International Airport Green Bay, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. Brown County, Wisconsin, as airport sponsor, is seeking release of 5.08 acres of land (hereafter referred to as the ''parcel'') from compliance with assurances attached as conditions to Federal grant agreements. The parcel is located north of State Trunk Highway No. 172, and directly east of and adjacent to lands owned by the Oneida Nation. The parcel is presently undeveloped.

The parcel was originally acquired by Brown County in fee simple from a private seller in 1958 using local airport revenue sources. No Federal or State dollars were used in the acquisition. There are no impacts to the airport by allowing the airport to dispose of the property. The Oneida Nation, as prospective purchaser of the parcel, intends to utilize the parcel to allow for continued development of their existing convention facility. Approval does not constitute a commitment to the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel J. Millenacker, Program Manager, FAA Airports District Office, 6020 28th Ave. South, Rm 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4359/fax Number (612) 713–5364. Documents reflecting this FAA action may be reviewed at this same location or at Office of Airport Director, Austin Straubel International Airport, Green Bay, WI.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Green Bay, Brown County, WI, and described as follows:

A tract of land being part of Government Lot 7. Section 6, T23N, R20E located within the Village of Ashwaubenon, Brown County, Wisconsin more fully described as follows: Commencing at the southeast corner of Government Lot 5, Section 6, T23N, R20E; thence N 0 °20 ′33″ W 1.39 feet along the east line of said Government Lot 5 to the point of beginning; thence continuing along said line N 0°20′33″ W, 855.26 feet; thence N 0° 24′ 31″ W, 112.78 feet along the east line of Government Lot 4, said Section 6; thence S 65 °25 ′01″ E, 273.06 feet along the south line of Private Claim 31, west side of Fox River; thence S 0 °20 ′33″ E, 818.49 feet to the northerly right-of-way of S.T.H. 172, also known as C.T.H. ''GG''; thence S 81 °42 ′18″ W, 249.91 feet along said right of way to the point of beginning. Said parcel contains 5.08 acres, more or less.

Issued in Minneapolis, MN on February 16, 2005.

Nancy M. Nistler,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–4131 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on three currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 9, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection, in preparation for submission to renew the clearances of the following information collections.

1. *2120–0601: Financial Responsibility for Licensed Launch Activities.* Information will be used to determine if licensees have complied with financial responsibility requirements (including maximum probably loss determination) as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation. Respondents are all licensees authorized to conduct licensed launch activities. The current estimated annual reporting burden is 1,305 hours.

2. *2120–0644: License Requirements for Operation of a Launch Site.* The information collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites. The current estimated annual reporting burden is 1,592 hours.

3. *2120–0646: Protection of Voluntarily Submitted Information.* The rule regarding the protection of voluntarily submitted information acts to ensure that certain non-required information offered by air carriers will not be disclosed. The respondents apply to be covered by this program by submitting an application letter notifying the Administrator that they wish to participate. The current estimated annual reporting burden is 5 hours.

Issued in Washington, DC, on March 2, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 05–4528 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Wavier of Aeronautical Land-Use Assurance, Chippewa County International Airport, Sault Ste. Marie, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of 2 parcels of land, totaling approximately 17.89 acres. Current use and present condition is undeveloped land compatible with local commercial zoning classification. The land was acquired under the Military Installation Conversion Program, Federal Property and Administrative Services Act of 1949, Surplus Property Act of 1944. There are no impacts to the airport by allowing the airport to dispose of the property. Subject parcels may provide good commercial development opportunities for the community and are well outside airport perimeter fence limits. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Marlon D. Peña, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET–ADO 610, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2909/ FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Chippewa County International Airport, Sault Ste. Marie, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Sault Ste. Marie, Chippewa County, Michigan, and described as follows:

Parcel 1

That portion of the following described parcel lying north and west of the centerline of Kallio Road: Part of the East 400 feet of the Southeast ¼ of the Southeast ¼, Section 25, Town 45 North, Range 2 West, Kinross Township, Cippewa County, Michigan, more particularly described as beginning at the Southeast corner of said Section 25; thence N01°39′02″E 232.00 feet along the East line of said Section 25 to the Southeast corner of a parcel as described in a document recorded in Llber 151, page 204, Cipppewa County Records; thence N01°39′02″E 133.22 feet along the West line of said parcel to the Southwesterly line of Highway M–80; thence northwesterly 325.30 feet along a curve to the right in said Southwesterly line, having a radius of 2924.69 feet, a central angle of 06°21′11″ and a long chord bearing N53°48′29″W 324.13 feet to the West line of said East 400 feet; thence S01°39′02″W 547.04 feet along said West line to the South line of said Section 25; thence S88°04′02″E 400.00 feet to the point of beginning.

Parcel 2

Part of the East 600 feet of the North 1620 feet of the North ½ of section 36, Town 45 North, Range 2 West, Kinross Township, Chippewa County, Michigan, more particularly described as commencing at the Northeast corner of said Section 36; thence S01°19′41″W 1620.09 feet along the East line of said Section 36 to the point of beginning; thence N74°04′35″W 172.64 feet; thence N31°37′27″W 308.53 feet; thence N16°42′30″E 417.85 feet; thence N01°10′10″E 595.54 feet to the North line of said Section 36, thence N88°04′02″W 382.80 feet along said North line to the West line of said East 600 feet; thence S01°19′41″W 1620.09 feet along said West line to the South line of said North 1620 feet; thence S88°04′02″E 600.03 feet along said South line to the East line of said section 36; thence N01°19′41″E 321.60 feet along said East line to the point of beginning.

Issued in Romulus, Michigan on January 25, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–4527 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Technical Assistance Needs in Human Service Transportation Coordination

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice is soliciting comment on technical assistance needs in human service transportation coordination.

DATES: Comments must be submitted by June 15, 2005.

ADDRESSES: Comments are to be submitted via fax or electronic format. Comments may be faxed to Elizabeth Solomon, United We Ride Office, at 202–366–3136. Comments submitted in electronic form may be sent to *unitedweride@fta.dot.gov*

FOR FURTHER INFORMATION CONTACT: Elizabeth Solomon at 202–366–0242; FAX: 202–366–3136.

SUPPLEMENTARY INFORMATION: Personal mobility is something easily taken for granted. For many people, this means merely starting the car or walking to the subway. However, an increasing number of Americans are unable to get to work, run errands, or access medical care simply because they do not have reliable transportation. In 2000, the number of older adults was more than 30 million, and is expected to double by 2030. To date, almost 54 million people were reported to have disabilities. Many are individuals who cannot operate a vehicle because of medical conditions, disabilities, or other limitations. In addition, there are others who are unable to afford their own automobile, or live in areas without public transportation options. ''Human service transportation'' means meeting the basic, day-to-day mobility needs of transportation-disadvantaged populations, especially individuals with low-incomes, people with disabilities, and older Americans. The family of human service transportation services supported by Federal programs includes much more than dedicated buses or vans. It includes programs that reimburse consumers for taxi or public transportation use, provide bus tokens, purchase or modify private vehicles, reimburse consumers for gas and vehicle operating costs, operate school bus service, and provide technical assistance for transportation planning.

There are many reasons to be concerned about human service transportation today. Specifically, the lack of transportation affects an individual's independence and opportunity. However, human service transportation is not just about improving individual lives, it is about improving all facets of our economy, culture, and society that rely on transportation systems to work effectively at the community level. When transportation does not work, other things—our healthcare system, our economy, and our civic culture—cannot work at their best, either. Reliable transportation is both a prerequisite for a healthy economy and often the first step toward independence and opportunity for people with low incomes, older adults, and people with disabilities. Individuals who are transportation-disadvantaged face different challenges in accessing services depending on whether they live in urban, rural, or suburban areas. The geographic dispersion of transportation-disadvantaged populations also creates challenges for human service programs hoping to deliver transportation for their consumers.

In recognition of the fundamental importance of human service transportation and the continuing need to enhance coordination to maximize mobility, President Bush issued Executive Order 13330 on Human Service Transportation, in February 2004, directing 10 Federal departments and agencies to work together to ensure that transportation services are seamless, comprehensive and accessible. The Executive Order includes establishing a new Interagency Transportation Coordinating Council on Access and Mobility (CCAM). Specifically, the CCAM is tasked with seeking ways to simplify access to transportation services for persons with disabilities, persons with lower incomes, and older adults. The Executive Order requires that CCAM work together to provide the most appropriate, cost effective services within existing resources, and reduce duplication to make funds available for more services.

During the past year, the CCAM has launched *United We Ride*, a national initiative to implement the Executive Order, which is intended to simplify access, reduce duplication of Federal rules and regulations, and increase cost efficiencies using existing resources. To affectively implement United We Ride, the CCAM has developed a comprehensive action plan.

Issues for Exploration

One of the consistent needs identified by Council members is the provision of technical assistance to provide transportation agencies, human service providers, consumers, and other community agencies with specific knowledge and information related to human service transportation. Technical assistance (TA) is a process within a dynamic context that enables a goal focused, strategy oriented, accountable organization to transfer knowledge to clients for the purpose of their growth, change, and improvement (National Early Childhood Technical Assistance System, 2001). TA is intended to provide extensive information and assistance to facilitate adoption or application of research-based or practice-based products, policies, or knowledge in order to improve the provision of services and ultimately impact outcomes for target populations who are the beneficiaries of the services (National Association of State Directors of Special Education, 2001). TA may include, information dissemination, training, and enhancing capacity for building more efficient transportation services at the local and state levels. The overarching goals of this TA is to facilitate the expansion of transportation services and options for older persons, persons with disabilities and low income persons in their local communities. A key strategy to accomplish this expansion of service is coordination of transportation programs and initiatives.

We are soliciting the views of the transportation industry, human service providers, and consumers of human transportation services specifically on the TA needs in the area of human service transportation expansion through coordination and other pertinent strategies. We seek specific information about TA strategies, topics, and approaches that would be useful to facilitate enhanced coordination and transportation services for people with disabilities, older adults, and people with lower incomes at the local level. The public is invited to share their views on existing technical assistance efforts and/or identify thoughts about future options for delivering effective technical assistance to the field. Your comments can be drawn from personal and/or professional experiences you have as a human service provider, a transportation agency, a state agency, or as a consumer of transportation services. Your comments may also include familiar practices that would be valuable to share among other people who provide services, or unmet needs that you may face at the state and/or local level.

Specifically, we ask that you address one or more of the following or a related issues: *Topics for TA:* Are there specific topics/issues that you, your community, or your agency would find useful in advancing human service transportation.

Strategies for TA: What types of TA, information and/or training would be helpful to you, your community, or your agency-in advancing human service transportation coordination? What types of formats and strategies (*e.g.,* audio, visual, face to face, internet, newsletters, peer to peer, etc.) do you find most helpful and useful for learning new information?

Experiences with TA: Do you have experience and/or examples with successful technical assistance strategies that have been useful for you, your community, or your agency? Please include any additional information that you believe will be helpful for enhancing TA in the area of human service transportation coordination.

Listening Sessions

In addition to the submission of written comments, members of the CCAM Workgroup on TA will also conduct up to five ''Listening Sessions'' during meetings hosted by national organizations being held across the country. Organizations interested in hosting a listening session on TA in human service transportation coordination, should submit a written request to *unitedweride@fta.dot.gov* no later than May 1, 2005. Date and times for listening sessions will be posted at *unitedweride@fta.dot.gov.*

Dated: March 3, 2005.

Jennifer L. Dorn,

FTA Administrator.

[FR Doc. 05–4609 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of random drug and alcohol testing rates.

SUMMARY: This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

DATES: *Effective Date:* March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry Powers, Drug and Alcohol Program Manager for the Office of Safety and Security, (202) 366–2896 (telephone) and (202) 366–z7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through the FTA World Wide Web home page at *http://www.fta.dot.gov*, click on ''Safety and Security.''

SUPPLEMENTARY INFORMATION: The FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions on January 1, 1995, and to begin reporting annually by March 15 of each year beginning in 1996. The annual reporting includes the number of such employees who had a verified positive for the use of prohibited drugs, and the number of such employees who tested positive for the misuse of alcohol. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997. The 1994 rules, which were updated on August 1, 2001, established a random testing rate for prohibited drugs and the misuse of alcohol.

The rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the ''positive rate'' for the entire transit industry is less than one percent for two preceding consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year (''positive rate'' means the number of positive results for random drug tests conducted under 49 CFR 655.45 plus the number of refusals of random tests required by 49 CFR 655.49, divided by the total number of random drug tests, plus the number of refusals of random tests required by 49 CFR 655.)

The alcohol provisions provide that the random rate may be lowered to 10 percent if the ''violation rate'' for the entire transit industry is less than .5 percent for two consecutive years. It will remain at 25 percent if the ''violation rate'' is equal to or greater than .5 percent but less than one percent, and it will be raised to 50 percent if the ''violation rate'' is one percent or greater for any one year (''violation rate'' means the number of covered employees found during random tests given under 49 CFR 655.45 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by 49 CFR 655.49, divided by the total reported number of random alcohol tests plus the total number of refusals of random tests required by 49 CFR 655.)

In 2004, the FTA required a random drug testing rate of 50 percent of the total number of their ''safety-sensitive'' employees for prohibited drugs based on the ''positive rate'' for random drug test data from 2001 and 2002. FTA has received and analyzed the latest available data (CY2003) from a representative sample of transit employers. Because the random drug rate was not lower than 1.0 percent for the two preceding consecutive years (1.05 percent for 2002 and 0.96 percent for 2003), the random drug testing rate will remain at 50 percent for 2005.

In 2004, the FTA retained the random alcohol testing rate of 10 percent (reduced previously from 25 percent) based on the ''positive rate'' for random alcohol test data from 2002 and 2003. Because the random alcohol violation rate was again lower than .5 percent for the two preceding consecutive years (0.22 for 2002 and 0.20 percent for 2003), the random alcohol testing rate will remain at 10 percent for 2005.

FTA detailed reports on the drug and alcohol testing data collected from transit employers may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW., Room 9301, Washington, DC 20590, (202) 366–2896 or at *http://transit-safety.volpe.dot.gov/Publications.*

Issued On: March 3, 2005.

Jennifer L. Dorn,

Administrator.

[FR Doc. 05–4532 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20428; Notice 1]

Hankook Tire America Corp., Receipt of Petition for Decision of Inconsequential Noncompliance

Hankook Tire America Corp. (Hankook Tire) has determined that certain tires it produced in 2003 and 2004 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, New pneumatic tires for vehicles other than passenger cars.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hankook Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

A total of approximately 41,716 tires are involved, which were produced during the period April 1, 2003 through December 20, 2004. S6.5(d) of FMVSS No. 119 requires that the maximum load rating and corresponding inflation pressure of the tires be marked on the tire in both English and metric units. The noncompliant tires do not have the metric markings.

Hankook believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Hankook states that the noncompliance does not

relate to motor vehicle safety, and that the problem has been corrected either by discontinuation or change of the mold of the affected tires.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 8, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: March 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–4529 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–19996; Notice 2]

Dynamic Tire Corp., Grant of Petition for Decision of Inconsequential Noncompliance

Dynamic Tire Corp. (Dynamic Tire) has determined that certain tires it imported and which were manufactured by Tianjin Wanda Tyre Group Co., LTD do not comply with S6.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Dynamic Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on January 14, 2005, in the **Federal Register** (70 FR 2707). NHTSA received no comments.

A total of approximately 67,864 tires produced between August 1, 2004 to December 4, 2004 are affected. S6.5(b) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with ''the tire identification number required by part 574 of this chapter.'' Part 574.5(d) requires the date code to be listed such that the first two symbols must identify the week of the year and the third and fourth symbols must identify the year. The noncompliant tires reversed the order of these symbols.

Dynamic Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Dynamic Tire states that ''the production week * * * begins with the 31st week of 2004 which eliminates any possibility of confusion between week and year designation.'' Dynamic Tire further states that the tires comply with all other requirements of the Federal Motor Vehicle Safety Standards.

The agency agrees with Dynamic Tire that the noncompliance is inconsequential to motor vehicle safety. Since the production week begins with the 31st week of 2004, this eliminates any possibility of confusion between week and year designation. In addition, the tires comply with all other FMVSS requirements. Dynamic Tire has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Dynamic Tire's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: March 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–4530 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19529; Notice 2]

Toyota Motor North America, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Toyota Motor Corporation has determined that the daytime running lamps (DRLs) on certain vehicles it manufactured in 1998–2005 do not comply with S5.5.11(a) of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Toyota Motor North America, Inc. (Toyota), on behalf of Toyota Motor Corporation, has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Toyota's petition was published, with a 30 day comment period, on November 12, 2004, in the **Federal Register** (69 FR 65499). NHTSA received 48 comments.

A total of approximately 75,355 model year 1998–2005 Lexus LX470 vehicles are affected. The DRLs on the LX470s are mounted at 895 mm above the road surface, as measured from the center of the lamps with the vehicles at curb weight, and are provided by the upper beam headlamps operating at a reduced intensity. For this DRL configuration, S5.5.11(a) of FMVSS No. 108 requires that each such lamp have a luminous intensity not less than 500 candela at test point H–V, nor more than 3,000 candela at any location in the beam. However, each LX 470 DRL lamp exceeds the 3,000 maximum candela requirement by approximately 57% with a luminous intensity of roughly 4,720 candela at the maximum point in

the beam. Toyota did not indicate where in the beam this maximum point was located, nor provide any other photometry data to fully define the beam.

Toyota believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Toyota argues that its DRLs have the same or less glare than other permissible DRL configurations. In particular, Toyota compared its DRLs to a configuration that was designed to the requirements that apply to lower mounted upper beam headlamp DRLs. Paragraph S5.5.11(a)(1)(ii) provides that if an upper beam headlamp intended to operate as a DRL is mounted not higher than 864 mm above the road surface, as measured from the center of the lamp with the vehicle at curb weight, it may have a luminous intensity at test point H–V not more than 7,000 candela. Toyota states the following in its petition.

> Toyota conducted subjective evaluations of the glare from the DRLs using 19 contractors for the subject vehicles under various conditions, and confirmed that glare from the subject vehicles is the same or better than vehicles that were modified to meet the maximum DRL luminous intensity permitted by the standard at the height limit of 864 mm. Toyota evaluated the glare from the subject vehicles' DRLs by observing them through the rearview mirror of a small passenger car as well as directly, as from an oncoming vehicle. According to Toyota's evaluation, the subject vehicles received overall ratings above 5 (''lamps are just acceptable'').[1] Accordingly, in the scale, higher numbers indicate less glare.

Toyota further states,

> Toyota calculated the luminous intensity of light from the DRLs striking the rearview mirror of the preceding vehicle mounted 1,120 mm (44 inches) above the ground and 6.1 m (20 feet) in front of the DRL. We also indicated the allowable range of the regulation. * * * The assessment mirror height of 44 inches and distance of 20 feet [2] are the same used in NHTSA's own evaluation as described in the final rule published in the Monday, January 11, 1993 **Federal Register** (58 FR 3500). * * * [W]e can confirm that luminous intensity from the subject vehicle DRL (4,720 candela, 895 mm high) is below the maximum luminous intensity of allowable range up to 864 mm high.

Toyota indicated in its petition that the subject vehicles meet all requirements of the Canadian motor vehicle standards,[3] and that it has received no customer complaints or reports that allege a crash, injury or fatality due to problems arising from DRL glare by these vehicles. Toyota has corrected the problem.

NHTSA received 48 public comments in response to the notice of receipt. One comment from a private citizen supports granting the petition as ''more than reasonable'' but does not address the effect of the noncompliance on motor vehicle safety. The remaining 47 comments recommend denying the petition. The comment from Advocates for Highway and Auto Safety supports denial because

> Toyota's proffered subjective evaluation of glare fails to demonstrate that drivers will not find the noncompliant * * * DRLs * * * to produce either disabling or high discomfort glare that can be a factor in motor vehicle crashes.

The remaining 46 comments favoring denial were from private citizens. Of those, 26 favor denial because of excessive glare, 18 favor denial because of general opposition to DRLs, two favor denial because of potential danger to motorcyclists, and one favors denial because of the inability to distinguish directional light signals.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. As Toyota states in its petition, its evaluation of the glare from the noncompliant lamps was subjective. NHTSA agrees with Advocates for Highway and Auto Safety that this subjective evaluation does not substantiate that drivers will be unaffected by the extent of glare resulting from the 57% higher-than-allowed DRL intensity. The fact that 46 private citizens expressed concern about the noncompliance and its effect on safety, including 26 who specifically mentioned glare, makes even more questionable the non-objective assessment by Toyota under one possible scenario that this noncompliance is not consequential to motor vehicle safety.

The agency also notes that the LX470 is equipped with an ''Adjustable Height Control (AHC)'' that is described by Lexus as: ''AHC raises and lowers the LX470 nearly four inches—approximately two inches above and approximately two inches below normal—at the push of a button. Drivers can choose high, normal or low positions.'' Increasing the ride height of the LX470 by 2 inches (50 mm) under certain driving conditions may further exacerbate the glare experienced by preceding and oncoming drivers as a result of the equivalent increase in DRL height. The one comment by a private citizen that favors granting Toyota's petition does not address the consequences on motor vehicle safety, and therefore is not persuasive.

We have received hundreds of letters from citizens about excessive glare from headlamp-derived DRLs and particularly upper beam-derived DRLs. We have found that the actual intensities of some of these headlamp DRLs on vehicles are as much as 1.35 times the intensities measured when the lamps are photometrically tested in the laboratory—because vehicle voltages up to 14 volts are found on some vehicles (compared to the 12.8 volt lab test voltage). This may help explain why there are so many reports by the public of glare from DRLs.

We believe that manufacturers should be held to the existing location requirements so as not to exacerbate the problem of glare. The DRL intensity requirements in existence since February 10, 1993 were a significant relaxation (*i.e.*, increase in intensity) from that originally proposed on August 12, 1991 (56 FR 38100). Even then, DRL glare was an important issue. Public concerns have caused NHTSA to re-examine the intensity limits for DRLs. Given these circumstances, we cannot find that a noncompliance that substantially increases DRL glare is inconsequential to safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, its petition is hereby denied. Toyota must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

Authority: 49 U.S.C. 30118(d) and 30120(h); delegations of authority at CFR 1.50 and 501.8.

Issued on: March 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–4531 Filed 3–8–05; 8:45 am]

BILLING CODE 4910–59–P

[1] Toyota indicates in its petition that a rating of 1 indicates ''The headlamps are unbearable,'' while the highest rating of 9 indicates ''The headlamps are just noticeable.''

[2] NHTSA notes that its evaluation was conducted at a distance of 28 feet between the interior rearview mirror and the following vehicles DRLs.

[3] NHTSA notes that CMVSS No. 108 requires headlamps operating as DRLs to be mounted at heights permissible for headlamps (559–1372 mm) and have an intensity within 2000 cd to 7000 cd range. Other lamps operating as DRLs are limited to 3000 cd maximum and a maximum mounting height of 2110 mm.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–883 (Sub-No. 1X)]

Rocky Mount and Western Railroad Co., Inc.—Abandonment Exemption-in Nash County, NC

Rocky Mount and Western Railroad Co., Inc. (RM&W) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 4.7 miles of railroad from approximately milepost 134.8 at or near Momeyer to the end of the rail line at approximately milepost 139.5 at or near Spring Hope, in Nash County, NC. The line traverses United States Postal Service Zip Code 27882.

RM&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 8, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 21, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 29, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to RM&W's representative: Rose-Michele Weinryb, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RM&W has filed an environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 14, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1539. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RM&W shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by RM&W's filing of a notice of consummation by March 9, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 1, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4418 Filed 3–8–05; 8:45 am]

BILLING CODE 4915–02–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: The meeting will be held on Wednesday, March 23, 2005, in the New Orleans, Louisiana area and will begin at 9:30 a.m.

ADDRESSES: The venue has not been identified to date. Venue information will be posted on the Panel's Web site at *http://www.taxreformpanel.gov* as soon as it is available.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This meeting is the fifth meeting of the Advisory Panel, and will explore perceptions about the fairness of the tax code and focus on how our tax system affects families.

Comments: Interested parties are invited to attend the meeting; however, no public comments will be heard at the meeting. Any written comments with respect to this meeting may be mailed to The President's Advisory Panel on Federal Tax Reform, 1440 New York Avenue NW., Suite 2100, Washington, DC 20220. On February 16, 2005, the Panel requested written comments in response to four specific questions about the Federal tax system. For additional information regarding this request for comments, please see *http://www.taxreformpanel.gov/contact.* All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov.*

Dated: March 4, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–4603 Filed 3–8–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 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, April 5, 2005 from 11 a.m. to 12 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, April 5, 2005, from 11 a.m. to 12 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 954–423–7979, or write Sallie Chavez, 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 Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: April 4, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–4614 Filed 3–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 7, 2005 from 12 p.m. to 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, April 7, 2005, from 12 p.m. to 1 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 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: March 4, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–4615 Filed 3–8–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine claimants' eligibility for surviving spouses and children to REPS (Restored Entitlement Program for Survivors) benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 9, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0390'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application of Surviving Spouse or Child for REPS Benefits (Restored Entitlement Program for Survivors), VA Form 21–8924.

OMB Control Number: 2900–0390.

Type of Review: Extension of a currently approved collection.

Abstract: Survivors of deceased veteran's complete VA Form 21–8924 to apply for Restored Entitlement Program for Survivors (REPS) benefits. REPS benefits is payable to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as of a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,800.

Dated: February 22, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–4523 Filed 3–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0159]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0159.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0159'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Matured Endowment Notification, VA Form 29–5767.

OMB Control Number: 2900–0159.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–5767 is used to notify the insured that his or her endowment policy has matured. The form also request that the insured elect whether he or she prefer to receive the proceeds in monthly installment or in a combination of cash and monthly installment and to designate a beneficiary(ies) to receive the remaining proceeds.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2004 at page 65503.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,867 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,600.

Dated: February 22, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–4524 Filed 3–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0038.'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0038'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Information from Remarried Widow/er, VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4103 is used to collected data necessary to determine whether a child or children of a deceased veteran who served during a wartime period is eligible to receive death pension benefits when the surviving spouse's entitlement to death pension is permanently lost when he or she remarries.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2004 at page 65506.

Affected Public: Individuals or households.

Estimated Annual Burden: 334 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: February 22, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–4525 Filed 3–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0355]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0355.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0355'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Verification of Pursuit of Course (Leading to a Standard College Degree Under Chapters 32, 34, and 35, Title 38, U.S.C., and section 903 of Public Law 96–342), VA Form 22–6553.

OMB Control Number: 2900–0355.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–6553 is used to verify continued enrollment or report changes in enrollment status of claimants receiving educational benefits in pursuit of a college course. Schools are required to report to VA, when a claimant fails to enroll, has interrupted or terminated a program, or has unsatisfactory progress or conduct. VA uses the information from the current collection to ensure that schools promptly report changes in training and if a claimant's education benefits are to be continued unchanged, increased, decreased, or terminated.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 17, 2004 at page 67386.

Affected Public: State, Local or Tribal Governments and Not-for-profit Institutions.

Estimated Annual Burden: 14,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Estimated Number of Respondents: The number of respondents is arrived at based on the average number of educational institutions using VA Form 22–6553 which had veterans or eligible persons enrolled during the last 12 months, and a projected number of trainees. VA currently has an average of 6,000 active educational institutions (colleges, universities, or other institutions of higher learning).

Estimated Number of Response: The frequency of responses for each educational institution will vary according to the number of students who receive VA education benefits at that school. VA estimates an annual average of 14 responses per educational institution. The total annual number of response is 84,000.

Dated: February 22, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–4526 Filed 3–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Chiropractic Care Implementation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Chiropractic Care Implementation will meet Tuesday, March 29, 2005, from 8:15 a.m. until 5 p.m. and Wednesday, March 30, 2005 from 8:15 a.m. until 4 p.m. at 810 Vermont Avenue NW., Room 230, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on the implementation and evaluation of the chiropractic care program. The Committee will focus on monitoring the nationwide program implementation, reviewing and evaluating policy and program issues that affected implementation, recommending actions to improve the chiropractic health program, assisting in long-range planning and development, and such other matters as the Secretary determines to be appropriate.

On March 29, the Committee will receive an update on the status of VA's implementation of the chiropractic care program and briefing on related topics. On March 30, the Committee will discuss and provide input on evaluation of the chiropractic care program.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Designated Federal Officer, at (202) 273–8558 no later than 12 noon Eastern time on Thursday, March 24, in order to facilitate access to the meeting site.

Oral comments from the public will not be accepted at the meeting. Any comments from interested parties on issues related to chiropractic care may be transmitted electronically to *sara.mcvicker@mail.va.gov* or mailed to: Chiropractic Advisory Committee, Medical Surgical Services SHG (111), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: February 28, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–4516 Filed 3–8–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
March 9, 2005

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Federal Acquisition Regulations et al; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–01; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–01. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–01 and specific FAR case numbers. Interested parties may also visit our Web site at *http://www.acqnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Improvements in Contracting for Architect-EngineerServices (Interim)	2004–001	Jackson.
II	Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (Interim)	2004–037	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program.	2004–034	Jackson.
IV	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (Interim).	2004–036	Marshall.
V	Nonavailable Articles—Policy	2003–021	Davis.
VI	Cost Accounting Standards Administration	1999–025	R. C. Loeb.
VII	Elimination of Certain Subcontract Notification Requirements (Interim)	2003–024	Cundiff.
VIII	Use of FAR Clause 52.244-6, Subcontracts for Commercial Items	2002–021	Jackson.
IX	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–01 amends the FAR as specified below:

Item I—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001) (Interim)

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108–136).

Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004–037) (Interim)

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50,000,000 to $75,000,000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108–375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to $75 million. In addition to this change, FAR 6.304(a)(3)(ii) is corrected to replace the outdated GS–16 reference with ''a grade above GS–15.''

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program (FAR Case 2004–034)

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $5,000,000 ($10,000,000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104–106). The statute allows continued reduction of the burden on contracting officers and industry when acquiring commercial items or items treated as commercial items in accordance with 12.102(f)(1).

Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends

Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

Item V—Nonavailable Articles—Policy (FAR Case 2003–021)

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

Item VI—Cost Accounting Standards Administration (FAR Case 1999–025)

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230–6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024) (Interim)

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201–2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

Item VIII—Use of FAR Clause 52.244–6, Subcontracts for Commercial Items (FAR Case 2002–021)

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

Item IX—Technical Amendments

Editorial changes are made at FAR 28.203–3(d), 31.101, 42.203, and 52.225–13(b) in order to update references.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-01 is effective March 9, 2005, except for Items III, V, and VI, which are effective April 8, 2005.

Dated: February 24, 2005.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: February 22, 2005.

Pat Brooks,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: February 17, 2005.

Tom Luedtke,

Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

[FR Doc. 05–4083 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 8, 16, and 36

[FAC 2005–01; FAR Case 2004–001; Item I]

RIN 9000–AK15

Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136).

DATES: *Effective Date*: March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–001 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: *farcase.2004–001@gsa.gov*. Include FAC 2005–01, FAR case 2004–001 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2004–001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1427 of the Services Acquisition Reform Act of 2003 prohibits architect-engineer services from being offered under multiple award Federal Supply Schedules or under Governmentwide task and delivery order contracts unless the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal District, or outlying area, in which the services are to be performed and are awarded using the procedures of the Brooks Architect-Engineer Act.

FAR Subpart 2.1, Definitions, is revised to correct the statutory citation for architect-engineer contracts.

FAR 8.403(c) is added to clarify that agencies whose requirements substantially, or to a dominant extent, specify performance of architect-engineer services (as defined in 2.101) must use the procedures at FAR Subpart 36.6.

A new paragraph 16.505(a)(8) is added to stipulate that orders that substantially, or to a dominant extent, specify the performance of architect-engineer services (as defined in 2.101), must be issued using the procedures at FAR Subpart 36.6 and such services require the direct supervision of a professional architect or engineer who is licensed, registered, or certified in the State, Federal District or outlying area where the services are to be performed.

FAR 36.600 is revised to make the policies and procedures in FAR Subpart 36.6 applicable to orders for architect-engineer services issued under FAR 16.505.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.*, because the interim rule clarifies an already existing requirement that architecture and engineering services be procured using the procedures at FAR Subpart 36.6.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 8, 16, and 36 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2004–001, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Federal agencies require clear guidance to avoid inadvertently violating the requirements of the Brooks Architect-Engineers Act and section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136.) Section 1427(b) went into effect November 24, 2003.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 8, 16, and 36

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 8, 16, and 36 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 8, 16, and 36 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b) in the definition ''Architect-engineer services'' by removing ''40 U.S.C. 541'' and adding ''40 U.S.C. 1102'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Amend section 8.403 by adding paragraph (c) to read as follows:

8.403 Applicability.

* * * * *

(c) In accordance with section 1427(b) of Public Law 108–136, for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in 2.101), agencies—

(1) Shall use the procedures at Subpart 36.6; and

(2) Shall not place orders for such requirements under a Federal Supply Schedule.

PART 16—TYPES OF CONTRACTS

■ 4. Amend section 16.505 by redesignating paragraph (a)(8) as (a)(9) and adding a new paragraph (a)(8) to read as follows:

16.505 Ordering.

(a) * * *

(8) In accordance with section 1427(b) of Public Law 108–136, orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, shall—

(i) Be awarded using the procedures at Subpart 36.6; and

(ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 5. Revise section 36.600 to read as follows:

36.600 Scope of Subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services, including orders for architect-engineer services under multi-agency contracts (see 16.505(a)(8)).

[FR Doc. 05–4084 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005–01; FAR Case 2004–037; Item II]

RIN 9000–AK12

Federal Acquisition Regulation; Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard, as a result of Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 both places it appears and inserting $75,000,000 in its place. In addition, the FAR is amended by replacing the outdated reference to ''grade GS–16'' with ''a grade above GS–15.''

DATES: *Effective Date:* March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–037, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: *farcase.2004–037@gsa.gov*. Include FAC 2005–01, FAR case 2004–037, in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–037, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2004–037.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375,which amends 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 both places it appears and inserting $75,000,000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 6 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2004–037), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 815 of Public Law 108–375, which was effective upon enactment (October 28, 2004). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 6

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

■ 2. Amend section 6.304 by revising the introductory text of paragraph (a)(3), paragraph (a)(3)(ii), and the first sentence of paragraph (a)(4) to read as follows:

6.304 Approval of the justification.

(a) * * *

(3) For a proposed contract over $10,000,000, but not exceeding $50,000,000, or, for DoD, NASA, and the Coast Guard, not exceeding $75,000,000, by the head of the procuring activity, or a designee who—

* * * * *

(ii) If a civilian, is serving in a position in a grade above GS–15 under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over $50,000,000 or, for DoD, NASA, and the Coast Guard, over $75,000,000, by the senior procurement executive of the agency designatedpursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. * * *

* * * * *

[FR Doc. 05–4085 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 2005–01; FAR Case 2004–034; Item III]

RIN 9000–AK11

Federal Acquisition Regulation; Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to extend the timeframe to use the test program for commercial items.

DATES: *Effective Date*: April 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2004–034.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement Section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 817 amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104–106) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $5,000,000 ($10,000,000 for acquisitions as described in 13.500(e)).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law98–577, and publication for public comments is not required. This rule continues current FAR policy. However, the Councils will consider comments from small entities concerning the affected FAR Part 13 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

13.500 [Amended]

■ 2. Amend Section 13.500 in paragraph (d) by removing ''January 1, 2006'' and by adding ''January 1, 2008'' in its place.

[FR Doc. 05–4086 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–01; FAR Case 2004–036; Item IV]

RIN 9000–AK14

Federal Acquisition Regulation; Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) regarding the addition of landscaping and pest control services to the Small Business Competitiveness Demonstration Program. This FAR revision implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to include landscaping and pest control services.

DATES: *Effective Date*: March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–036 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–036@gsa.gov*. Include FAC 2005–01, FAR case 2004–036 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat

(VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–036, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–01, FAR case 2004–036.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). The law amends the Small Business Competitiveness Demonstration Program to include landscaping and pest control services. The emerging small business reserve amount for these new services is set at $25,000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there will be additional categories added to the designated industry groups listed in FAR 19.1005. This rule adds landscaping (561730) and pest control (561710) services to the list of National American Industry Classification System (NAICS) codes included as designated industry groups of the Small Business Competitiveness Demonstration Program. The Initial Regulatory Flexibility Act is summarized as follows:

The objective of the interim rule is to further assess the ability of small business concerns to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. The implementation of Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 will change the FAR as follows: (1) revises the designated industry groups to include Exterminating and Pest Control Services and Landscaping Services in the definition of ''Emerging small business reserve amount'' at FAR 19.1002(1) and in 19.1005(a); (2) deletes the word ''four'' before designated industry groups in the FAR.

The interim rule will apply to all small business concerns that compete on Federal acquisitions falling under NAICS codes 561730 and 561710. Based on Governmentwide data retrieved from the Federal Procurement Data System (FPDS) for the specified NAICS codes, approximately 141 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in Fiscal Year 2002 for NAICS code 561730. This represents about 88 percent of all contracts awarded with unrestricted competition for that NAICS code. In Fiscal Year 2003, there were 116 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 81 percent of all contracts awarded with unrestricted competition for that NAICS codes. FPDS data also show that 25 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in Fiscal Year 2002 for NAICS code 561710. This represents about 56 percent of all contracts awarded with unrestricted competition for that NAICS code. In Fiscal Year 2003, there were 17 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 77 percent of all contracts awarded with unrestricted competition for that NAICS codes. It is estimated that small business concerns will continue to be successful in winning at least one-half to three-fourths of awards on an unrestricted basis when these designated industry groups are added to the Small Business Competitiveness Demonstration Programs given the history of their success in recent unrestricted competitive government acquisitions falling under NAICS codes 561730 and 561710. Additional data retrieved from FPDS show that the number of small business set-asides for NAICS code 561730 in Fiscal Years 2002 and 2003 combined was approximately 952 and the number of small business set-asides for NAICS code 561710 in Fiscal Years 2002 and 2003 combined was approximately 96.

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5.U.S.C. 601, *et seq.*, because previously set-aside acquisitions for services falling within NAICS codes 561730 and 561710 will now be included in the designated industry groups of the Small Business Competitiveness Demonstration Program. FAR 19.1007(b) states that—

> ''Solicitations for acquisitions in any of the designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under Subpart 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal. Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8), the HUBZone Program (see Subpart 19.13), and the Service-Disabled Veteran-Owned Small Business Procurement Program (see Subpart 19.14).''

Given the large number of awards made under these NAICS codes, it is anticipated that the addition of the 2 NAICS codes to the Small Business Competitiveness Demonstration Program will promote an increased number of opportunities for small business concerns to develop teaming arrangements and joint ventures.

The purpose of the Competitiveness Demonstration Program is to assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in FAR 19.1005(a) and will include the addition of landscaping and pest control services to the designated industry groups. The interim rule imposes no reporting, recordkeeping, or other compliance requirements. The interim rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this interim rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2004–036), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the interim rule includes FAR text revisions

required to implement the recently enacted Public Law 108–375, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (October 28, 2004), Section 821, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.502–2 [Amended]

■ 2. Amend section 19.502–2 in paragraph (d) by removing the word ''four''.

■ 3. In section 19.1002 revise paragraph (1) of the definition ''Emerging small business reserve amount'' to read as follows:

19.1002 Definitions.

* * * * *

Emerging small business reserve amount * * *

(1) $25,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and

* * * * *

■ 4. Amend section 19.1005 in paragraph (a) by adding an Item 5 to the ''NAICS Description'' to read as follows:

19.1005 Applicability.

(a) * * *

NAICS CODE	NAICS DESCRIPTION
* * * * *	
5. Landscaping and Pest Control Services	
561710	Exterminating and Pest Control Services
561730	Landscaping Services
* * * * *	

19.1001, 19.1003, 19.1007, and19.1008 [Amended]

■ 5. In addition to the amendments set forth above, remove the word ''four'' in the following places:(a) Section 19.1001(a);(b) Section 19.1003(a) and (c);(c) Section 19.1007(b) and (c); and(d) Section 19.1008(a).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212–3 by revising the date of the clause to read ''(MAR 2005)'' and by removing from paragraphs (c)(8)(i) and (c)(8)(ii) the word ''four'' wherever it appears.

[FR Doc. 05–4087 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–01; FAR Case 2003–021; Item V]

RIN 9000–AJ95

Federal Acquisition Regulation; Nonavailable Articles-Policy

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the intent of the list of items determined to be nonavailable for purposes of the Buy American Act, and to emphasize the need to conduct market research, appropriate to the circumstances, for potential domestic sources.

DATES: *Effective Date*: April 8, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–01, FAR case 2003–021.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 29632, May 24, 2004. The rule proposed to amend FAR Subpart 25.1 in order to clarify that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the proposed rule also emphasized the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list. The Councils received no comments on the proposed rule and have agreed to convert the proposed rule to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is a clarification of existing policies, except for requiring a more proactive approach to market research by the Government.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.103 by revising paragraph (b) to read as follows:

25.103 Exceptions.

* * * * *

(b) *Nonavailability.* The Buy American Act does not apply with respect to articles, materials, or supplies

if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations.* (i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American Act provision and clause are included in the solicitation (see 25.1101(a), 25.1101(b), or 25.1102);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in 1.201–1, in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.* (i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201–1, in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

* * * * *

■ 3. Amend section 25.104 in paragraph (a) by removing ''25.103(b)'' and adding ''25.103(b)(1)(i)'' in its place; and revising paragraph (b) to read as follows:

25.104 Nonavailable articles.

* * * * *

(b) This list will be published in the **Federal Register** for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

25.202 [Amended]

■ 4. Amend section 25.202 in the last sentence of paragraph (a)(2) by removing ''25.104(b)'' and adding ''25.103(b)(1)'' in its place.

[FR Doc. 05–4088 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–01; FAR Case 1999–025; Item VI]

RIN 9000–AI70

Federal Acquisition Regulation; Cost Accounting Standards Administration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising language pertaining to the Cost Accounting Standards Administration, and the related FAR contract clause, Administration of Cost Accounting Standards. In addition, a new contract clause is added, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost-impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. To assist in understanding the changes between the current FAR rule and this final FAR rule, a matrix that summarizes the major changes is provided in Section C, Supplementary Information, below.

DATES: *Effective Date:* April 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Richard C. Loeb, Acting Director, Office of Acquisition Policy, at (202) 208–3810. Please cite FAC 2005–01, FAR case 1999–025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 20854, April 18, 2000, with a request for comments by June 19, 2000. Nine respondents submitted public comments. Additional comments were also provided by the public at a series of public meetings held on August 2, September 26, and October 17, 2000. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** at 68 FR 40104, July 3, 2003, with a request for comments by September 2, 2003. An additional public meeting was held on August 5, 2003.

Nine respondents submitted comments in response to the second proposed FAR rule. A discussion of these public comments are provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the second proposed rule and final rule are discussed in Section B, Comments 8, 9, 12, 21, 26, 27, 28, 29, 35 and Other Changes, below.

B. Public Comments

Public Meeting

1. *Comment:* Four respondents recommended holding a public working group session to address the concerns and recommendations contained in the public comments submitted in response to the proposed rule.

Councils' response: Nonconcur. With the removal of the calculation of increased cost in the aggregate from the final rule (*see* comment 26), the Councils do not believe there are any issues that warrant holding another public meeting.

Complex and Prescriptive

2. *Comment:* Five respondents asserted that the proposed rule is overly prescriptive. One respondent stated that the proposed rule is unnecessarily complicated and does not address the major reasons that the current process does not work. Two respondents asserted the proposed rule is so detailed and prescriptive that CFAOs will be unable to exercise good business judgment and consider the unique aspects of each contractor's business environment in settling issues. Another respondent stated that the highly prescriptive nature of this regulation will impede the expeditious and fair resolution of CAS issues. The respondent stated that CFAOs will interpret the proposed rule as significantly decreasing the flexibility regularly exercised under the current regulation. Yet another respondent asserted that the detailed requirements for a GDM are too prescriptive. This respondent stated that, in many cases, very high-level GDM's are all that is needed to determine if an impact is going to be immaterial, while in other cases, a GDM with more detail may be necessary. They stated that the GDM's require more flexibility than is provided for in the proposed amendment.

Councils' response: Nonconcur. The Councils do not believe that the general content of the rule is overly prescriptive. The Councils believe that the CFAO and the contractor have significant flexibility in the proposed process, including the ability to determine materiality at any time during the process, the ability to submit a GDM in whatever format that is acceptable to the CFAO, and the ability to negotiate the cost-impact by adjusting a single contract, multiple contracts, or some other suitable method. However, the Councils concur with some of the specific recommendations made in the public comments regarding revisions to the proposed language. To the extent the respondents have provided specific comments regarding the prescriptive nature of the rule, the Councils have addressed those comments and made recommended revisions as deemed appropriate.

Define ''Cost Accumulation''

3. *Comment:* One respondent recommended defining the term ''cost accumulation'' in FAR Part 31.001, Definitions, and clarifying the expression ''noncompliances that involve accumulating costs.''

Councils' response: Nonconcur. The Councils do not agree that there is confusion as to the intent of the term. The Councils believe the term ''cost accumulation'' is self-evident and clearly understood. In addition, since the CAS Board defines ''accumulating costs'' in 48 CFR 9904.401–30(a)(1), there is no need to add clarifying language regarding the expression ''noncompliances that involve accumulating costs.''

Adequacy Determination—Cost-Impact System

4. *Comment:* One respondent recommended that the proposed rule be revised to ''require the CFAO to make a determination, in conjunction with DCAA, regarding a contractor's cost-impact system and their ability to submit cost-impact proposals. If a contractor has the ability to identify increased or decreased cost accumulations for each affected CAS-covered contract and subcontract and can properly summarize the increased or decreased cost by contract type and Government agency, the CFAO should be required to utilize that contractors system.''

Councils' response: Nonconcur. The Councils are unaware of any criteria that have been established as the basis for a CFAO's determination of adequacy of a contractor's cost-impact system, unlike other systems upon which the Government makes determinations of adequacy, such as accounting or billing systems. The Councils also believe that such criteria are unnecessary. The effort necessary to establish and continuously review cost-impact systems would not be cost beneficial to the Government or the contractor. The proposed rule provides the contractor with the flexibility to submit a GDM and/or DCI proposal in any format that is acceptable to the CFAO. To the extent a contractor has a process that produces GDM and/or DCI proposals that are acceptable to the CFAO, the contractor will continue to be able to use that process under the proposed rule.

CFAO Acting for Non-DoD Agencies

5. *Comment:* One respondent stated that the CFAO responsibilities set forth in the proposed rule will not work at contractors who have CAS-covered contracts and subcontracts with many Government agencies. The respondent further stated that agencies outside of DoD have refused to accept final incurred expense rates that have been audited by DCAA and approved by its ACO and, therefore, it is inconceivable that agencies such as DOE or USAID will allow a CFAO to execute a bilateral modification to one of its contracts.

Councils' response: Nonconcur. The Councils have not changed the requirements under FAR 30.601, Responsibilities. CAS administration for all contracts and subcontracts in a business unit must be performed by a single agency. The proposed rule merely uses the term ''Cognizant Federal Agency Official (CFAO)'' instead of ''cognizant ACO.'' This does not change the responsibilities of the cognizant Federal agency.

Under FAR 42.202(d), delegation of functions pertaining to cost accounting standards cannot be rescinded by any contracting agency. Furthermore, FAR 42.703 sets forth that a single agency shall be responsible for establishing final indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

Materiality Determination—Guidelines

6. *Comment:* One respondent recommended that the FAR Council provide guidelines for what constitutes adequate documentation in making a determination of materiality.

Councils' response: Nonconcur. The Councils believe that any attempt to add guidelines for what constitutes adequate documentation would be overly prescriptive, could result in submittal of unnecessary documentation, would reduce the flexibility needed to resolve cost-impacts in a timely manner, and could potentially lead to disputes. The Councils' position is consistent with the requirements at FAR 1.704, Determination and Findings (D&F). As noted at 30.601, Responsibilities, the CFAO is required to make all CAS-related required D&Fs for all CAS-covered contracts and subcontracts. FAR 1.704 requires that each D&F include necessary supporting documentation to clearly and convincingly justify the specific determination made. However, since each case must be evaluated based on its particular facts and circumstances, FAR 1.704 does not provide guidelines for what constitutes necessary supporting documentation. Similarly, since each cost-impact must be evaluated based on

the particular facts and circumstances, the Councils do not believe it is necessary to provide guidelines for what constitutes adequate documentation.

Immateriality Determination—Prior to GDM

7. *Comment:* One respondent expressed concern with the wording of the proposed rule which allows for a determination of materiality before submittal of the GDM. The respondent asked how the CFAO can make such a determination and what data would have to be provided to the CFAO for this determination.

Councils' response: The Councils believe there will be instances in which a determination of materiality can be made (based on the criteria at 48 CFR 9903.305) without submittal of a GDM. The data required to make such a determination would be identified by the CFAO on a case-by-case basis, depending on the particular facts and circumstances involved. The Councils note that language at 30.602(b)(1) provides the CFAO with such flexibility, something that other respondents have emphasized is needed in the cost-impact process. The Councils also note that this language was endorsed by another respondent who stated that they ''* * * support the Council's efforts to clarify the process for determining and resolving cost-impacts and believes there are favorable aspects of the proposed amendment. For example, the proposed cost-impact process begins without having to prepare a general dollar magnitude (GDM) proposal. In addition, the Cognizant Federal Agency Official (CFAO) has the ability to make materiality determinations at any time during the process.''

Immateriality Determination—Documentation

8. *Comment:* One respondent recommended that whenever the CFAO determines the cost-impact is immaterial, the CFAO should be required to document the criteria used in making that determination.

Councils' response: Concur. The Councils believe a requirement for the CFAO to document the immateriality determination is appropriate and has included the requirement at FAR 30.602(c)(2).

Clarify ''Assertion''

9. *Comment:* One respondent recommended modifying or removing the term ''assertion'' in the statement at contract clause FAR 52.230–6(b) that reads ''a description of any cost accounting practice change to the Disclosure Statement and any assertion that the cost-impact of the change is immaterial.'' In addition, the respondent recommended that any statement by the contractor regarding whether the cost-impact of the change is immaterial should be in writing.

Councils' response: Concur. To avoid potential confusion, the Councils agree that paragraph (b) of the contract clause at FAR 52.230–6 be revised to require submission of a written statement that the cost-impact is immaterial. In addition, the term ''written statement'' replaces the term ''assertion'' at FAR 30.603–1(c)(2)(ii), 30.603–2(c)(1)(ii), and 30.605(b)(2)(ii)(B).

Time Restrictions for Contractor

10. *Comment:* One respondent recommended that the Council reinstate existing specific time limits for the contractor to provide information regarding accounting changes and noncompliances in all paragraphs where the phrase ''by a specified date'' is used.

Councils' response: Nonconcur. The respondent's references to the CFAO affixing ''a specified time limit'' for contractors to submit a GDM (FAR 30.604(b)(1)(i)), revised GDM (FAR 30.604(f)(1)), or DCI (FAR 30.604(f)(2)) does not provide flexibility to the CFAO to specify a date that is commensurate with the complexity of the issue(s). Ultimately, the total time allotted a contractor is addressed by FAR 30.604(i), Remedies, which may be disputed by the contractor.

Time Restrictions for Government

11. *Comment:* Two respondents stated that the proposed rule does not address one of the major problems associated with the resolution of cost-impact proposals related to noncompliances and accounting changes. One respondent stated that the problem is the fact that the Government has no time restrictions for performing its responsibilities. The respondent recommended that the proposed rule require all actions related to these issues be performed within specific time frames. In addition, the respondent recommended that reasonable response times be established for Government personnel.

Councils' response: Nonconcur. The Councils believe a specific time requirement for CFAO action could increase disputes concerning the adequacy of contractor submissions since the time periods cannot reasonably start until an adequate submission is received. The Councils are not aware of, and the respondents did not provide, a remedy for Government failure to comply with a recommended time requirement.

DCI in Lieu of GDM

12. *Comment:* Two respondents stated that the submittal of a GDM requires extra analysis and is less precise than a detailed cost proposal. The respondents asserted that the databases and cost-impact calculation systems used by CAS-covered contractors can provide a DCI that is much more precise than the calculations required by a GDM.

Councils' response: Partially concur. The GDM proposal does not require extra analysis. Proposed FAR 30.604(d) and 30.605(d) allow the CFAO and contractor flexibility in the submittal of a GDM. For some contractors, the databases and cost-impact calculation systems they use allow for the computation of DCIs with relative ease. In such cases, it is anticipated that a contractor would submit the cost-impact calculation generated by its system as the GDM. However, the final rule has been revised at FAR 30.604(d)(3) and 30.605(d)(3) to clarify that the contractor may submit a DCI in lieu of a GDM proposal. The Councils believe that allowing, but not requiring, the submittal of a GDM gives contractors flexibility to submit proposals as complex and precise as they choose, up to and including the submittal of a full DCI.

Cost-Impact Approximations

13. *Comment:* Two respondents stated that the use of approximations of prices and cost accumulations are not necessary. Both respondents stated that it is easy and more cost effective to calculate DCI proposals. One respondent also stated that it does not see why a contractor should be required to calculate the increased cost in the aggregate one way for a GDM proposal and another way for the cost-impact calculation.

Councils' response: Nonconcur. For some contractors, the databases and cost-impact calculation systems they use allow for the computation of detailed cost-impacts with relative ease. For other contractors, this is not necessarily the case. The Councils believe that allowing the submittal of a GDM that provides a reasonable approximation of the total increase in cost accumulations, gives contractors flexibility to submit proposals as complex and precise as they choose, up to and including the submittal of a full DCI. However, since some contractors may choose to go directly to the DCI, the final rule has been revised to specifically state that the contractor may

submit a DCI in lieu of a GDM proposal (see comment 12).

Representative Sample and Projections

14. *Comment:* Two respondents stated that the use of a representative sample and the projection of that sample to determine the total increase or decrease in cost accumulations are problematic. Both respondents stated that they have had difficulties over the years in reaching agreement with the Government on what constitutes a representative sample.

Councils' response: Nonconcur. The Councils believe that for some contractors, the projection of representative samples is a feasible method for computing increases and decreases in cost accumulations for the purposes of the submittal of a GDM (*see* FAR 30.604(e)(2)(i) and 30.605(d)(2)(i)). For contractors that find it problematic to come to an agreement with the Government on what constitutes a representative sample, there are alternative methods for computing increases and decreases in cost accumulations in preparing for the submittal of a GDM. In addition, the final rule has been revised to permit contractors to submit a DCI in lieu of a GDM proposal (see comment 12).

Firm-Fixed-Price Contracts

15. *Comment:* Six respondents commented that firm-fixed-price (FFP) contracts should not be included in cost-impacts for changes in cost accounting practices. One respondent asserted that ''increased costs to the Government only result from a change in contractor's cost accounting practices when the actual costs paid by the Government are more than they would have been had the contractor's practices not changed.'' The respondent further asserted that FFP contracts are not included in the cost-impact because the amount of costs a contractor assigns to FFP contracts due to a change in cost accounting practices has no effect on the amount ultimately paid by the Government.

Councils' response: Nonconcur. FFP contracts are properly included in cost-impacts for changes in cost accounting practice in the subject rule. 48 CFR 9903.306(a) does not differentiate among contract types in its definition of increased costs to the Government. Further, 48 CFR 9903.306(b) measures increased costs for FFP contracts by ''the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance.'' The final rule at FAR 30.604 is consistent with the requirements at 48 CFR 9903.306(a) and (b).

Required Information

16. *Comment:* One respondent questioned whether the benefits to be derived from the requirement at FAR 30.604(e)(3) to provide certain information when a unilateral change is involved are worth the costs to comply. The respondent's concern was based on its belief that FAR 30.606(c)(3) neither justifies why the information is needed nor discusses how the information will be used.

Councils' response: Nonconcur. The information required by FAR 30.604(e)(3) (the increased or decreased costs by agency, and the increased or decreased costs for fixed-price contracts and subcontracts and flexibly-priced contracts and subcontracts) is required to determine how any adjustments will be handled. Specifically, the increase or decrease by agency is needed to assure that the contracts to be adjusted and the amounts of those adjustments are fairly allocated among the executive agencies. The breakout by firm-fixed price and flexibly-priced contracts is needed since the terms ''increased costs'' and ''decreased costs'' mean different things when applied to fixed-price versus flexibly-priced contracts.

GDM Versus DCI

17. *Comment:* One respondent commented that over the last decade, ''technology has advanced to the stage where a very accurate cost-impact proposal covering all affected pricing actions, (by contract, task, agency, contract type, etc.) is now practical. The speed and power of personal computers, combined with advances in database technology, now make it much easier to calculate precise cost-impacts in a very short time.'' Thus, ''the debate over GDM versus DCI cost-impacts may well become moot.''

Councils' response: Nonconcur. The Councils believe that retention of the GDM as an option available to the CFAO promotes the streamlining of the cost-impact process in many cases, such as those where the contractor does not have a sophisticated cost-impact system as envisioned by the respondent. The final rule at FAR 30.604(f)(1) provides that the CFAO may use the GDM to resolve cost-impacts without requiring the preparation of a DCI. The Councils believe that this option will result in a significant savings of resources for both the contractor and the Government.

Contradictory Rules

18. *Comment:* One respondent stated that proposed FAR 30.604(h) seems to apply only to Detailed Cost-impact proposals (DCIs), but the proposed language in the FAR clause at FAR 52.230–6(f) applies the principle to both General Dollar Magnitude Proposals (GDMs) and DCIs. The respondent's conclusion is that these two paragraphs of the proposed rule are contradictory.

Councils' response: Nonconcur. FAR 30.604(e)(1), General dollar magnitude proposal content, and FAR 30.604(g)(1), Detailed cost-impact proposal, both require computation of the cost-impact in accordance with 30.604(h), Calculating cost-impacts. Thus, the proposed rule is not contradictory.

Cost-Impact Computations

19. *Comment:* One respondent stated that the required cost-impact computations set forth in FAR 30.604(h) and 30.605(h) cause additional administrative burden. These requirements preclude the respondent from utilizing its Government approved cost-impact system.

Councils' response: Nonconcur. The proposed rule does not preclude the respondent from using its cost-impact system, provided that the system computes the cost-impact in accordance with FAR 30.604(h) and 30.605(h). It is noted that the Government does not ''approve'' cost-impact systems.

Closed Contracts and Closed Years

20. *Comment:* Four respondents commented that the cost-impact calculation should not include closed contracts or years with final negotiated overhead rates.

Councils' response: Nonconcur. The Councils believe that it is appropriate to include closed contracts and closed fiscal years in the cost-impact calculation. Under the CAS clause at 48 CFR 9903.201–4(a)(5), the contractor in connection with this contract shall ''agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable cost accounting standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under Section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.''

The provision at 48 CFR 9903.201–4(a)(5) does not provide for the exclusion of closed contracts or closed fiscal years from the cost-impact calculation. Since the CAS Board has not excluded such contracts, the Councils believe they must be included in the cost-impact calculation. The Councils further note that this position is consistent with the treatment of closed contracts and final negotiated overhead rates for price adjustments under the Truth in Negotiations Act. Defective pricing claims are often brought after the contract is closed and closure is no barrier to Government relief. The Councils also believe this is consistent with the position historically taken by the Government on CAS.

Cost-Impacts in Prior Years

21. *Comment:* One respondent stated that the proposed language at FAR 30.604(h)(1) infers that all cost-impacts occur in prior periods. The cost-impact calculation for all affected contracts generally involves the ''estimated cost to complete'' that will be incurred in future periods, after the change is implemented. To clarify that the cost-impact can involve existing contracts that will be performed in the future, insert the words ''or will be'' between ''were'' and ''incurred.''

Councils' response: Concur. The Councils agree that the respondent's recommendation will clarify the intent of the language at FAR 30.604(h)(1). However, the Councils believe the language at FAR 30.604(h)(1), as well as 30.605(h)(1), would be better clarified by inserting the word ''are'' in place of the word ''were.''

Change in Cost Accumulation

22. *Comment:* Two respondents expressed concern that the proposed rule requires that a GDM and/or DCI is required for a change in cost accumulation without regard to whether costs were billed. The respondents stated that the Government cannot be harmed until an actual billing has been submitted and paid. One respondent questioned how there can be any increased or decreased costs paid by the Government related to a unilateral change if contractors are complying with the current regulations.

Councils' response: Nonconcur. The rule assumes that the contractor's system used to accumulate costs is also used to bill those costs. While the Government cannot be harmed until the costs are actually billed, the CFAO is required to take action to preclude the Government from paying increased costs. Thus, if action is not taken to correct the noncompliance in cost accumulation, the increased costs could ultimately be billed to the Government. Note that one of the actions that can be taken is the correction of the accumulated costs to correct the noncompliance.

Estimated Cost To Complete—Same Level of Work

23. *Comment:* One respondent recommended that the language regarding the two estimates to complete at FAR 30.604(h)(3) be revised to state that they should be based on contractor performance at the same level of contract work. The respondent recommended adding the words ''in cost accumulation'' and the phrase ''required to perform the same level of contract work.''

Councils' response: Nonconcur. The language at issue concerns the items to be included in a GDM and DCI proposal. Based on past experience, the Councils believe adding the recommended language is more likely to cause confusion and disputes rather than add clarity. In the CAS Board Announced Notice of Proposed Rulemaking on changes in cost accounting practice and in the first proposed rule on FAR Part 30, the language required that the estimates be based on a ''consistent baseline.'' In both instances, public comments were submitted that clearly showed confusion as to the intent of the proposed language and requested clarification as to what was meant by a ''consistent baseline.'' The Councils believe the revised final language at FAR 30.604(h)(3) is sufficient for the parties to understand that the purpose of using an estimate to complete is to determine the difference in cost accumulations solely as a result of the changed practice, *i.e.*, the two estimates to complete cannot use different work scopes, different anticipated wage increases, different anticipated material price increases, or any other differences that do not result from the use of a different accounting practice.

Estimated Cost To Complete

24. *Comment:* Four respondents stated that the proposed rule requires the contractors to use current estimates-to-complete to calculate the cost-impact of changes to cost accounting practices. Two of the respondents asserted that such estimates may be so impacted by other events occurring subsequent to the award of a contract that they do not provide a reasonable basis for measuring increased costs to the Government.

Councils' response: Nonconcur. Although not specifically stated, it appears that the respondents are addressing the use of current estimates to complete for determining the cost-impact on fixed-price contracts (see FAR 30.604(h)(3)). For flexibly-priced contracts, since the current estimates to complete represent the actual amount that will be reimbursed, there should be no issue regarding the use of such estimates.

The Councils do not believe it is practical to use the original cost estimates for determining the cost-impact on fixed-price contracts. The Councils believe using current estimates to complete is the only feasible method for computing the cost-impact of changes in cost accounting practice. As noted in CAS Working Group Paper 76–9, there are several serious impediments to using original cost estimates for adjusting fixed-price contracts. While the parties to a fixed-price contract have agreed to a total price, there is often no agreement as to how much of the price represents cost and how much of the price represents profit, and seldom a meeting of the minds on the amount of any individual element of cost. Further, many fixed-price contracts will have undergone numerous price changes due to engineering modifications and other changes. In such cases, tracking an individual cost element may prove virtually impossible. There is also the danger that the confusion resulting from the attempt to reconstruct the original data will provide an opportunity to re-price loss portions of contract performance that have elapsed prior to the point of the change.

Define ''In the Aggregate''

25. *Comment:* One respondent commented that the CAS Board should define ''in the aggregate.''

Councils' response: The Councils recommend the respondent address its suggestion to the CAS Board, which can then decide if any action is necessary.

Increased Costs in the Aggregate

26. *Comment:* Eight respondents stated that the proposed rule on increased costs in the aggregate was a violation of CAS and the statutory provision.

Councils' response: The comment is no longer applicable—the final rule does not include the calculation of increased cost in the aggregate. The calculations at the following proposed coverage were removed from the final rule: 30.604(h)(3), and (4)(iv)(A) through (C); and 30.605(h)(5), (6), (8)(i) and (ii), and (9).

In addition, revisions were made at the following proposed coverage as a result of the removal of the calculations: 30.604(h)(4)(i), (ii), and (iv)—now 30.604(h)(3)(i), (ii), and (iv); and

30.605(h)(3), (4), and (8)—now 30.605(h)(3), (4), and (6).

Offsets Between Contract Types

27. *Comment:* Two respondents stated that the proposed rule incorrectly disallows offsets between contract types. In addition, one respondent asserted that the Government could be provided with a ''windfall profit'' if offsets are not allowed between contract types in the case of any noncompliance or unilateral change that causes costs to shift between fixed-price contracts and subcontracts and flexibly-priced contracts and subcontracts.

Councils' response: The comment is no longer applicable—the final rule does not include the calculation of increased cost in the aggregate. The calculations were removed from the final rule (*see* comment 26).

Interest Computation—Calculation

28. *Comment:* One respondent stated that it does not understand how interest can be calculated by multiplying the difference in indirect costs by an applicable base, and that the methodology used to compute interest at FAR 30.605(d)(2)(ii)(B) makes no sense.

Councils' response: Concur. The Councils recognize that potential confusion could result from the language, and that the language may be overly prescriptive. The Councils have therefore revised the final rule to eliminate the discussion of interest by deleting proposed FAR 30.605(d)(2)(ii)(B) to reduce the prescriptive nature of the language.

Interest Computation—Over and Underpayments

29. *Comment:* One respondent stated that the proposed requirements for calculating quarterly interest payments associated with overpayments or underpayments for noncompliances are overly prescriptive.

Councils' response: Concur. The Councils believe it is imperative for the contractor to provide information on when any increased costs were paid, so that the CFAO can compute interest in accordance with the statutory requirements. However, the Councils recognize that more flexibility can be inserted in the process. Therefore, the Councils revised the requirements for a GDM and DCI proposal at proposed FAR 30.605(d)(3)(iii) (now 30.605(d)(4)(iii)) by adding ''for fixed-price and flexibly-priced contracts'' after the word ''underpayments'' in the first sentence, and deleting the second sentence that required total over and underpayments be broken down by quarter.

Quarterly Data

30. *Comment:* One respondent asserted that the ''proposed rule mandates a schedule of increased or decreased costs paid by quarter (or an analysis to demonstrate why such a schedule is necessary) by Executive agency as a required part of a general dollar magnitude cost-impact for an alleged noncompliance.'' The respondent stated that this administrative burden should be evaluated.

Councils' response: Nonconcur. The proposed rule at FAR 30.605(d)(3) does not require a schedule of increased or decreased costs paid by quarter by Executive agency as part of a general dollar magnitude cost-impact. The proposed rule requires that the GDM include the total overpayments and underpayments broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal. It does not require that such amounts also be broken down by Executive agency. It is noted that the Councils removed the requirement at proposed FAR 30.605(d)(3)(iii) that the overpayments and underpayments be broken down by quarter in the GDM proposal (*see* comment 29), as well as the requirement at proposed FAR 30.605(g)(2)(i) and (ii) concerning the computation of interest on the quarterly amounts billed.

Task Order Contracts

31. *Comment:* One respondent stated that one of the many situations that greatly affect the cost accumulation calculation that is not addressed in the proposal is the trend toward task order contracts that may have both fixed fee and incentive fee tasks, as well as CAS covered and non-CAS covered tasks.

Councils' response: Nonconcur. The Councils believe that this situation is adequately covered by the language at FAR 30.605(h)(5), and the definition of ''Affected CAS-covered contracts'' at FAR 30.001.

FAR 30.605(h)(5) requires that the computation of the cost-impact include a calculation of the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). Thus, if the task involves a fixed fee, the contractor would need to compute the increase or decrease in that fixed fee as a result of the change or noncompliance. Conversely, if the task involved an incentive fee, the contractor would need to compute the increase or decrease in the incentive fee as a result of the change or noncompliance.

As for the issue of CAS-covered versus non-CAS-covered tasks, a contract cannot contain both CAS-covered and non-CAS-covered tasks. In order for CAS-coverage to differ between tasks, each task would have to be a separate contract. In such cases, the definition of affected CAS-covered contracts would exclude the non-CAS covered tasks from the computation of the cost-impact.

Cost-Impact on Incentives, Fee, and Profit

32. *Comment:* One respondent stated that FAR 30.605(h)(5) excludes flexibly-priced contract cost ceilings or target costs for determining increased costs in the aggregate for noncompliances involving estimating costs. The respondent stated that the proposed requirement is only applied to fixed price contracts, and asserted that ''the proposed coverage ignores the cost-impact on negotiated flexibly priced contract cost ceilings or target costs that were understated or overstated due to a contractor's proposal that contained estimated costs which were based on the use of a noncompliant practice.'' The respondent recommended that FAR 30.605(h)(5) be revised to include flexibly-priced contracts in the computation of increased costs in the aggregate for estimating noncompliances. The respondent also stated that under FAR 30.606(c)(4)(ii), as proposed, fixed price contracts would only be subject to downward price adjustment if there are ''net'' increased cost to the Government and opined that flexibly-priced contracts should not be excluded from the adjustment process. The respondent believes that the proposed approach to only recover the aggregate increased cost to the Government for fixed price contracts can result in inequities.

Councils' response: Nonconcur. The Councils believe that flexibly-priced contracts are properly included in the computation of increased costs in the aggregate. For a noncompliance in estimating costs, the Councils do not believe the impact on negotiated flexibly-priced contract cost ceilings or target costs should be included in the computation of increased costs in the aggregate. Under a flexibly-priced contract, the Government reimburses the actual costs incurred. As a result, a noncompliance in estimating the costs does not affect the total costs the Government will ultimately reimburse on flexibly-priced contracts. However, an estimating noncompliance may have a significant impact on the amount of

incentives, fees or profits for flexibly-priced contracts. Thus, the final rule requires inclusion of the impact on incentives, fees, and profits in computing the increased costs in the aggregate for estimating noncompliances.

Records Retention

33. *Comment:* One respondent stated that problems with the current process for handling cost-impacts could be addressed by adding a requirement for contractors to retain cost proposals that were the basis for negotiating the value of the CAS-covered pricing actions.

Councils' response: Nonconcur. The Councils disagree that adding a specific requirement to FAR Part 30 is appropriate. FAR 4.703, Policy-Contractor Records Retention, already describes the record retention requirements for contract negotiations, administration, and audit requirements of the contracting agencies. The Councils believe these record retention requirements are adequate for purposes of CAS administration.

Adjust Each Individual Contract

34. *Comment:* One respondent recommended that FAR 30.606(a)(2) include an analysis of the total payments that would be made if all affected contracts were individually adjusted so that the CFAO can determine whether one or more contracts are to be adjusted, or if an alternative method can be used to resolve the impact. The respondent asked how, without such data, the CFAO can determine that the Government will not pay more, in the aggregate, than would be paid if the CFAO had adjusted all affected contracts?

Councils' response: Nonconcur. In an ideal world, the contractor would provide a detailed analysis of the total payments for each and every affected contract. However, the Councils recognize that this is often not feasible and, in fact, would impose a significant administrative burden on contractors, extending the cost-impact process by years. The Councils do not believe that individual contract data is necessary in every circumstance in order for the CFAO to determine increased costs in the aggregate. The final rule, therefore, provides the CFAO the flexibility to obtain data at a more macro level, if appropriate.

Combining Certain Types of Impacts

35. *Comment:* Two respondents stated that they believe the proposed language at FAR 30.606(a)(3) is counter productive as it contains language that will further limit the Government and the contractor from resolving some of the more complex cost-impacts. The section precludes the Government from combining cost-impacts that include: (a) Changes implemented in different fiscal years, (b) changes and noncompliances, (c) two or more noncompliances, and (d) different categories of changes.

Councils' response: Partially concur. The Councils believe that some language at FAR 30.606(a)(3) is necessary to protect the interests of the Government. However, the Councils also recognize that the proposed language should be revised to provide some additional flexibility to the CFAO in resolving cost-impacts. The Councils, therefore, revised the language at FAR 30.606(a)(3) to reflect the following:

(a) *Changes implemented in different fiscal years.* The Councils agree with the respondent that implementing changes in different fiscal years should not be the basis for precluding the combination of such changes. The Councils have, therefore, deleted proposed 30.606(a)(3)(i) from the final rule.

(b) *Required/desirable changes combined with unilateral changes/noncompliances.* The actions taken to resolve a required or desirable change (negotiate an equitable adjustment) are different from the actions taken to resolve a unilateral change or a noncompliance (recover increased costs to the Government). Therefore, the Councils believe that combining cost-impacts of required/desirable changes with the cost-impacts of unilateral changes/noncompliances should be prohibited, as indicated at FAR 30.606(a)(3)(i).

(c) *Combining unilateral changes and/or noncompliances.* When the individual cost-impact of each unilateral change and each noncompliance is increased costs in the aggregate, the Councils agree that the change and noncompliance may be combined for administrative ease in resolving cost-impacts, as indicated at FAR 30.606(a)(3)(ii). Such combinations can only be made by mutual agreement of both parties.

The Councils further believe that combining the cost-impacts of unilateral changes and/or noncompliances must be precluded if any of the individual changes or noncompliances involved results in decreased costs in the aggregate. When there are two or more unilateral changes/noncompliances, some with increased costs and others with decreased costs, combining the cost-impact of those changes does not comply with the statutory requirement that the Government recover the increased costs in the aggregate for each unilateral change/noncompliance. There is no statutory provision that permits offsetting the cost-impact of one unilateral change/noncompliance with the cost-impact of any other unilateral change/noncompliance.

(d) *Cost-impacts of a unilateral change affecting two or more segments.* The Councils recognize that, in some circumstances, a unilateral change may affect more than one segment. When such a change affects the flow of costs between segments or implements a common cost accounting practice for two or more segments, the CFAO may treat this as a single change for cost-impact purposes, as indicated at FAR 30.606(a)(3)(iii).

Mandatory Adjustments and Disallowance of Costs

36. *Comment:* Regarding FAR 30.606, one respondent stated that ''The proposed mandatory provisions in (c)(3)(i) and (ii) appear incompatible with the CASB provision at 48 CFR 9903.201–6(b) and the proposed permissive provision at (c)(3)(iii).'' The respondent further stated that ''The proposed provision at (c)(3)(iii) provides the CFAO 'may' adjust contract prices, including cost ceilings or target costs, provided contract prices are not increased in the aggregate.'' The respondent also stated that ''This appears predicated on the CASB regulatory provision at 48 CFR 9903.201–6(b), but the FAR proposal makes it subservient to the mandatory provisions at (c)(3)(i) and (ii) which do not sanction such adjustments.'' The respondent then stated that ''the proposed rule appears to conflict with the CAS rules, as amended on June 14, 2000,'' and cited similar inconsistencies with FAR 30.606(c)(4). The respondent recommended that FAR 30.606(c)(3)(i) and (ii), and FAR 30.606(c)(4)(i) and (ii) be deleted and make the proposed provisions at (c)(3)(iii) and (c)(4)(iii) mandatory, for consistency with CAS rules. The respondent further recommended that the parenthetical at FAR 30.605(h)(3) be deleted because it does not require the adjustment of contract cost ceilings and target prices. Finally, the respondent recommended that, after adjusting the contract ceilings and target prices, FAR 30.606(c)(3) and (c)(4) include a ''mandatory provision requiring the CFAO to disallow accumulated costs under flexibly-priced contracts, but only for the portion of estimated increased cost accumulations that remains in a cost overrun condition after contract cost ceiling adjustments, if any, are made.''

Councils' response: Nonconcur. In an ideal world, the CFAO would adjust all

contracts so each and every dollar of the cost-impact is perfectly re-allocated to each and every affected contract. This would include all contract ceilings and target prices. However, the Councils recognize that this is often not feasible and, in fact, would impose a significant administrative burden on contractors, extending the cost-impact process by years. The CAS rules recognize the need for flexibility at 48 CFR 9903.306(f), which states:

> ''Whether cost-impact is recognized by modifying a single contract, several but not all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards do not in any way restrict the capacity of the parties to select the method by which the cost-impact attributable to a change in cost accounting practice is recognized.''

The Councils believe the final rule provides the CFAO the flexibility to adjust the contract cost ceilings and target prices when the CFAO deems appropriate, as provided for by the CAS rules.

Cost Accumulation Noncompliances

37. *Comment:* One respondent commented that the FAR Council should rethink its requirement for cost accumulation noncompliances. The respondent asserted that the only harm to the Government in such noncompliances is the application of interest to the difference between a compliant and noncompliant billing.

Councils' response: Nonconcur. The Councils do not agree with the respondent's assessment of the harm to the Government in the case of a noncompliance in accumulating costs. The respondent assumes that the contractor agrees to correct the noncompliance and immediately reflects the correction in subsequent billings to the Government. This may not always be the case since the Government and contractor may not agree on the nature and extent of the noncompliance and the contractor may decline to make appropriate adjustments to billed costs. In addition, the noncompliance may affect closed contracts for which there can be no corrections to billings. The calculation of the cost-impact of the accumulation noncompliance is necessary to ensure that the Government recovers the full extent of any increased costs as well as any statutorily required interest (*see* FAR 30.606(c)(5)).

Adjustment of Final Indirect Rates

38. *Comment:* Two respondents stated that the adjustment of final indirect rates by the CFAO is inappropriate. They stated that since ''final incurred cost rates are applicable to all Government contracts, not just CAS-covered Government contracts. Therefore, CAS issues are being forced on non CAS-covered contracts through the application of adjusted final incurred cost rates.'' One respondent also argued that the proposed rule does not reflect the position taken by the CAS Board in its second supplemental notice of proposed rulemaking, 64 FR 45700, August 20, 1999, in response to a respondent suggesting the use of the final indirect expense rate settlement process rather than contract price adjustments as a method to resolve a cost-impact. In response to that comment, the CAS Board stated ''Adjustments of indirect expense rates to settle a cost-impact action can result in the adjustment of the wrong contracts for the impact of the change in accounting practice. This method also results in the establishment of final indirect expense rates that are not consistent with a contractor's established and disclosed accounting practices for allocating indirect costs to final cost objectives.''

Councils' response: Nonconcur. CAS issues are not being forced on non CAS-covered contracts because the contractor must agree to any adjustment of final indirect rates. FAR 30.606(d)(1) states that the CFAO may use an alternate method to resolve the cost-impact provided the contracting parties agree on the use of that alternate method. Thus, the impact of the change or noncompliance will not affect non CAS-covered contracts unless the contractor agrees. The CAS Board recognizes the use of an alternate method such as adjusting indirect rates at 48 CFR 9903.306(f), which states ''Whether cost-impact is recognized by modifying a single contract, several but not all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards rules do not in any way restrict the method by which the cost-impact attributable to a change in cost accounting practice is recognized.''

Other Changes

The Councils revised the clause language at FAR 52.230–6, Administration of Cost Accounting Standards, to be in accord with the changes made to the final rule as described in the Councils' responses to the public comments, above. In addition, the Councils made several editorial-type changes to the proposed language to enhance clarity and structure of the final rule.

The Councils also made a clarifying change at FAR 30.001 to the definition of ''Fixed-price contracts and subcontracts'' to exclude fixed-price contracts with economic price adjustments (EPA) based on actual costs of labor or material (described at 16.203–1(a)(2)), and included these EPA contracts in the definition of ''Flexibly-priced contracts and subcontracts.''

C. Summary of Changes

Issue	Current FAR rule	Final FAR rule
	Definitions	
1.	No definitions for ''Affected CAS-covered contract,'' ''Fixed-price contracts,'' and ''Flexibly-priced contracts.''.	Added new definitions for ''Affected CAS-covered contract,'' ''Fixed-price contracts,'' and ''Flexibly-priced contracts'' (30.001).
2.	Included old CAS definitions and terminology of ''Mandatory change,'' ''Voluntary change,'' and ''Desirable change.''.	Updated definitions to match CAS definitions and terminology for ''Required change,'' ''Unilateral change,'' and ''Desirable change'' (30.001).
	Responsibilities	
3.	ACO is used throughout FAR section	Changed Administrative Contracting Officer (ACO) to Cognizant Federal Agency Official (CFAO) to be consistent with current CAS.

Issue	Current FAR rule	Final FAR rule
	Determinations	
4.	Did not contain actions for what to do if Disclosure Statement is adequate, inadequate, compliant, or noncompliant.	Provides actions to be taken when the Disclosure Statement is adequate (30.202–7(a)(2)(i)), inadequate (30.202–7(a)(2)(ii)), compliant (30.202–7(b)(2)), or noncompliant (30.605(b)).
	Materiality	
5.	No discussion of materiality	Added new section on materiality (30.602). Permits determination of immateriality at any time in the process; references CAS section on materiality in determining whether a change/noncompliance is immaterial; and requires CFAO to document rationale for any determination that the cost impact is immaterial.
	Required Changes	
6.	Did not address early implementation of a required change	Requires CFAO to process early implementation of a required change as a unilateral change, unless determined to be desirable (30.603–1(d)(2)).
	Unilateral and Desirable Changes	
7.	Did not address how a unilateral change is treated if a decision on desirability has not been made.	States that until a change is determined to be desirable, it shall be treated as a unilateral change (30.603–2(b)(2)).
8.	Did not provide information on how to determine whether a change is desirable.	Provides specific factors to consider in determining whether a change is desirable (30.603–2(b)(3)).
9.	Did not address retroactive changes	Provides specific section on retroactive changes (30.603–2(d)). CFAO can make a change retroactive to the beginning of the fiscal year in which the change was made.
10.	Did not include exemption from contract price adjustments for changes related to external restructuring activities.	Includes current CAS exemption from contract price adjustments for changes related to external restructuring activities (30.603–2(e)).
	Processing Changes to Disclosed or Established Cost Accounting Practices, And Processing Noncompliances	
11.	No process for evaluating changes or noncompliances	Includes process for evaluating changes (30.604(c)) and noncompliances (30.605).
12.	No separation of cost impact computation and cost impact resolution.	Separate cost impact computation (30.604(h) and 30.605(h)) from cost impact resolution (30.606).
13.	Required submittal of a GDM in format specified by ACO for use in determining whether cost impact is material.	Requires submittal of GDM in format specified by CFAO, provided certain basic information is included (30.604(e)(3)). GDM can be used as basis to negotiate cost impact (30.604(f)(1) and 30.605(e)(1)). Permits contractor to submit DCI proposal in lieu of GDM proposal (30.604(d)(3) and 30.605(d)(3)).
14.	Required DCI showing cost impact for each contract. DCI required anytime cost impact is material.	Requires DCI in format specified by CFAO, provided certain basic information is included. DCI does not need to include every contract if CFAO and contractor can agree on sample and to project results to universe (30.604(e)(2)(i) and 30.605(d)(2)(i)). DCI only required when GDM is not adequate for resolving cost impact (30.604(f)(2) and 30.605(e)(2)).
15.	Provided no information on what constituted increased or decreased cost.	Provides specific information on what constitutes increased and decreased cost. Does not include how to compute increased cost in the aggregate (30.604(h)(3)(iv) and 30.605(h)(6)). Also see Comment 26.
16.	Did not discuss equitable adjustments for required or desirable changes.	States that cost impact computation is used as basis for determining amount of equitable adjustments resulting from required or desirable changes (30.604(h)(4)).
	Interest	
17.	Does not address use of simple versus compound interest in determining amounts due resulting from increased cost paid on a noncompliance.	Does not address use of simple versus compound interest in determining amounts due resulting from increased cost paid on a noncompliance (30.605(g)).
	Resolving Cost Impacts	
18.	Requires ACO to coordinate with all PCO's whose contracts will be affected by $10,000 or more.	Requires CFAO to coordinate with all PCO's whose contracts will be affected by $100,000 or more (30.606(a)).

Issue	Current FAR rule	Final FAR rule
19.	Did not discuss which cost impacts could and could not be combined.	Specifies which cost impacts cannot be combined. Never combine a required change and a unilateral change; a required change and a noncompliance; a desirable change and a unilateral change; a desirable change and a noncompliance (30.606(a)(3)(i)). Never combine, unless all have increased costs, one or more unilateral changes; one or more noncompliances; unilateral changes and noncompliances (30.606(a)(3)(ii)). May treat as a single change any change affecting costs flowing between multiple segments and implementation of a common accounting practice among segments (30.606(a)(3)(iii)).
20.	ACO notifies PCO's of settlement, PCO's issue modifications adjusting contracts. No option other than adjusting contracts.	CFAO settles cost impact by modifying single contract, more than one contract, all contracts, or some alternate method (*e.g.*, adjusting indirect rates) (30.606(a)(2)). In adjusting indirect rates, CFAO must provide for appropriate gross-up to reflect Government participation (30.606(d)(3)(ii)) and can only make adjustments to final indirect cost rates (30.606(d)(3)(i)).
Subcontract Administration		
21.	Does not provide for remedies if a subcontractor refuses to submit a required GDM or DCI proposal.	Specifies that remedies are at the prime contract level if a subcontractor refuses to submit a required GDM or DCI proposal (30.607).
Contract Clause—Administration of CAS		
22.	Contract clause did not reflect process	Contract clause incorporates process (52.230–6).
Contract Clause—Proposal Disclosure—Cost Accounting Practice Changes		
23.	No provision to address how to price proposal when contract award will result in a change in accounting practice.	Added a new provision to address how to price proposal when contract award will result in a change in accounting practice (52.230–7).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all cost accounting standard requirements in accordance with 48 CFR 9903.201–1(b)(3).

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0129.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 2. Add section 30.001 to read as follows:

30.001 Definitions.

As used in this part—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the contracting officer assigned by the cognizant Federal agency to administer CAS.

Desirable change means a unilateral change to a contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.202, 16.203 (except when price adjustments are based on actual costs of labor or material, described at 16.203–1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours

contracts and subcontracts (Subpart 16.6).

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.203–1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (Subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

■ 3. Amend section 30.201–3 by adding paragraph (c) to read as follows:

30.201–3 Solicitation provisions.

* * * * *

(c) Insert the provision at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes, in solicitations for contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

■ 4. Amend section 30.202–6 by revising paragraphs (b) and (d) to read as follows:

30.202–6 Responsibilities.

* * * * *

(b) The contracting officer shall not award a CAS-covered contract until the cognizant Federal agency official (CFAO) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the agency head, on a nondelegable basis, authorizes award without obtaining submission of the required Disclosure Statement (see 48 CFR 9903.202–2). In this event, the contractor shall submit the required Disclosure Statement and the CFAO shall make a determination of adequacy as soon as possible after the award.

* * * * *

(d) The CFAO is responsible for issuing determinations of adequacy and compliance of the Disclosure Statement.

■ 5. Revise section 30.202–7 to read as follows:

30.202–7 Determinations.

(a) *Adequacy determination.* (1) As prescribed by 48 CFR 9903.202–6 (FAR Appendix), the auditor shall—

(i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; and

(ii) Report the results to the CFAO.

(2) The CFAO shall determine if the Disclosure Statement adequately describes the contractor's cost accounting practices. Also, the CFAO shall—

(i) If the Disclosure Statement is adequate, notify the contractor in writing, and provide a copy to the auditor with a copy to the contracting officer if the proposal triggers submission of a Disclosure Statement. The notice of adequacy shall state that—

(A) The disclosed practices are adequately described and the CFAO currently is not aware of any additional practices that should be disclosed;

(B) The notice is not a determination that all cost accounting practices were disclosed; and

(C) The contractor shall not consider a disclosed practice, by virtue of such disclosure, an approved practice for estimating proposals or accumulating and reporting contract and subcontract cost data; or

(ii) If the Disclosure Statement is inadequate, notify the contractor of the inadequacies and request a revised Disclosure Statement.

(3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAO receives the Disclosure Statement.

(b) *Compliance determination.* (1) After the notification of adequacy, the auditor shall—

(i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with CAS and Part 31, as applicable; and

(ii) Advise the CFAO of the results.

(2) The CFAO shall make a determination of compliance or take action regarding a report of alleged noncompliance in accordance with 30.605(b). Such action should include requesting a revised Disclosure Statement that corrects the CAS noncompliance. Noncompliances with Part 31 shall be processed separately.

■ 6. Amend section 30.202–8 by revising paragraph (a) to read as follows:

30.202–8 Subcontractor disclosure statements.

(a) When the Government requires determinations of adequacy of subcontractor disclosure statements, the CFAO for the subcontractor shall provide this determination to the CFAO for the contractor or next higher-tier subcontractor. The higher-tier CFAO shall not change the determination of the lower-tier CFAO.

* * * * *

■ 7. Revise Subpart 30.6 to read as follows:

Subpart 30.6—CAS Administration

Sec.

30.601 Responsibility.
30.602 Materiality.
30.603 Changes to disclosed or established cost accounting practices.
30.603–1 Required changes.
30.603–2 Unilateral and desirable changes.
30.604 Processing changes to disclosed or established cost accounting practices.
30.605 Processing noncompliances.
30.606 Resolving cost impacts.
30.607 Subcontract administration.

30.601 Responsibility.

(a) The CFAO shall perform CAS administration for all contracts and subcontracts in a business unit, even when the contracting officer retains other administration functions. The CFAO shall make all CAS-related required determinations and findings (*see* Subpart 1.7) for all CAS-covered contracts and subcontracts, including—

(1) Whether a change in cost accounting practice or noncompliance has occurred; and

(2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved.

(b) Within 30 days after the award of any new contract subject to CAS, the contracting officer making the award shall request the CFAO to perform administration for CAS matters (see Subpart 42.2). For subcontract awards, the contractor awarding the subcontract must follow the procedures at 52.230–6(b).

30.602 Materiality.

(a) In determining materiality, the CFAO shall use the criteria in 48 CFR 9903.305 (FAR Appendix).

(b) A CFAO determination of materiality—

(1) May be made before or after a general dollar magnitude proposal has been submitted, depending on the particular facts and circumstances; and

(2) Shall be based on adequate documentation.

(c) When the CFAO determines the cost impact is immaterial, the CFAO shall—

(1) Make no contract adjustments and conclude the cost impact process;

(2) Document the rationale for the determination; and

(3) In the case of noncompliance issues, inform the contractor that—

(i) The noncompliance should be corrected; and

(ii) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the cost impact become material in the future.

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall adjust the contract or use another suitable method (*see* 30.606).

30.603 Changes to disclosed or established cost accounting practices.

30.603–1 Required changes.

(a) *General.* Offerors shall state whether or not the award of a contract would require a change to an established cost accounting practice affecting existing contracts and subcontracts (*see* 52.230–1). The contracting officer shall notify the CFAO if the offeror states that a change in cost accounting practice would be required.

(b) *CFAO responsibilities.* Prior to making an equitable adjustment under the applicable paragraph(s) that address a required change at 52.230–2, Cost Accounting Standards; 52.230–3, Disclosure and Consistency of Cost Accounting Practices; or 52.230–5, Cost Accounting Standards—yEducational Institution, the CFAO shall determine that—

(1) The cost accounting practice change is required to comply with a CAS, or a modification or interpretation thereof, that subsequently became applicable to one or more contracts or subcontracts; or

(2) The former cost accounting practice was in compliance with applicable CAS and the change is necessary to remain in compliance.

(c) *Notice and proposal preparation.* (1) When the award of a contract would require a change to an established cost accounting practice, the provision at 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes, requires the offeror to—

(i) Prepare the contract pricing proposal in response to the solicitation using the changed cost accounting practice for the period of performance for which the practice will be used; and

(ii) Submit a description of the changed cost accounting practice to the contracting officer and the CFAO as pricing support for the proposal.

(2) When a change is required to remain in compliance (for reasons other than a contract award) or to comply with a new or modified standard, the clause at 52.230–6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor written statement that the cost impact of the change is immaterial.

(d) *Equitable adjustments for new or modified standards.* (1) Required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard (*see* 52.230–2, 52.230–3, or 52.230–5).

(2) When a contractor elects to implement a required change to comply with a new or modified standard prior to the applicability date of the standard, the CFAO shall administer the change as a unilateral change (*see* 30.603–2). Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate to the Government prior to the applicability date unless the CFAO determines that the unilateral change is a desirable change.

30.603–2 Unilateral and desirable changes.

(a) *Unilateral changes.* (1) The contractor may unilaterally change its disclosed or established cost accounting practices, but the Government shall not pay any increased cost, in the aggregate, as a result of the unilateral change.

(2) Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing a unilateral change at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine that—

(i) The contemplated contract price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate; and

(ii) The net effect of the contemplated adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.

(b) *Desirable changes.* (1) Prior to taking action under the applicable paragraph(s) addressing a desirable change at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine the change is a desirable change and not detrimental to the interests of the Government.

(2) Until the CFAO has determined a change to a cost accounting practice is a desirable change, the change is a unilateral change.

(3) Some factors to consider in determining if a change is desirable include, but are not limited to, whether—

(i) The contractor must change the cost accounting practices it uses for Government contract and subcontract costing purposes to remain in compliance with the provisions of Part 31;

(ii) The contractor is initiating management actions directly associated with the change that will result in cost savings for segments with CAS-covered contracts and subcontracts over a period for which forward pricing rates are developed or 5 years, whichever is shorter, and the cost savings are reflected in the forward pricing rates; and

(iii) Funds are available if the determination would necessitate an upward adjustment of contract cost or price.

(c) *Notice and proposal preparation.* (1) When a contractor makes a unilateral change, the clause at 52.230–6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor written statement that the cost impact of the change is immaterial.

(2) If a contractor implements the change in cost accounting practice without submitting the notice as required in paragraph (c)(1) of this subsection, the CFAO may determine the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605.

(d) *Retroactive changes.* (1) If a contractor requests that a unilateral change be retroactive, the contractor shall submit supporting rationale.

(2) The CFAO shall promptly evaluate the contractor's request and shall, as soon as practical, notify the contractor in writing whether the request is or is not approved.

(3) The CFAO shall not approve a date for the retroactive change that is before the beginning of the contractor's fiscal year in which the request is made.

(e) *Contractor accounting changes due to external restructuring activities.* The requirements for contract price and cost adjustments do not apply to compliant cost accounting practice changes that are directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325. However, the disclosure requirements in 52.230–6(b) shall be followed.

30.604 Processing changes to disclosed or established cost accounting practices.

(a) *Scope.* This section applies to required, unilateral, and desirable changes in cost accounting practices.

(b) *Procedures.* Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. The CFAO shall—

(1) If the description of the change is both adequate and compliant, notify the contractor in writing and—

(i) For required or unilateral changes (except those requested to be determined desirable changes), request the contractor submit a general dollar magnitude (GDM) proposal by a specified date, unless the CFAO determines the cost impact is immaterial; or

(ii) For unilateral changes that the contractor requests to be determined desirable changes, inform the contractor that the request shall include supporting rationale and—

(A) For any request based on the criteria in 30.603–2(b)(3)(ii), the data necessary to demonstrate the required cost savings; or

(B) For any request other than those based on the criteria in 30.603–2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change;

(2) If the description of the change is inadequate, request a revised description of the new cost accounting practice; and

(3) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(c) *Evaluating requests for desirable changes.* (1) When a contractor requests a unilateral change be determined a desirable change, the CFAO shall promptly evaluate the contractor's request and, as soon as practical, notify the contractor in writing whether the change is a desirable change or the request is denied.

(2) If the CFAO determines the change is a desirable change, the CFAO shall negotiate any cost or price adjustments that may be needed to resolve the cost impact (see 30.606).

(3) If the request is denied, the change is a unilateral change and shall be processed accordingly.

(d) *General dollar magnitude proposal.* The GDM proposal—

(1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous cost accounting practice;

(2) Assists the CFAO in determining whether individual contract price or cost adjustments are required; and

(3) The contractor may submit a detailed cost-impact (DCI) proposal in lieu of a GDM proposal provided the DCI proposal is in accordance with paragraph (g) of this section.

(e) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts.

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) A general dollar magnitude estimate of the total increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(f) *General dollar magnitude proposal evaluation.* The CFAO, with the assistance of the auditor, shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall notify the contractor in writing and conclude the cost-impact process with no contract adjustments. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request that the contractor submit a revised GDM proposal by a specified date with specific additional data needed to resolve the cost impact (*e.g.,* an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in cost accumulations); or

(2) Request that the contractor submit a DCI proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(g) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) Shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and

(ii) Estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the requirements at paragraphs (e)(3)(i) and (ii) of this section; and

(4) When requested by the CFAO, shall identify all affected contracts and subcontracts.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.,* open or closed) or the fiscal year(s) in which the costs are incurred (*i.e.,* whether or not the final indirect rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated costs to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government.

(ii) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government.

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated.

(iv) Calculate the increased cost to the Government in the aggregate.

(4) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(i) *Remedies.* If the contractor does not submit the accounting change description or the proposals required in paragraph (d) or (g) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall—

(1) With the assistance of the auditor, estimate the general dollar magnitude of the cost impact on affected CAS-covered contracts and subcontracts; and

(2) Take one or both of the following actions:

(i) Withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information.

(ii) Issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

30.605 Processing noncompliances.

(a) *General.* Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing noncompliance at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine that—

(1) The contemplated contract price or cost adjustments will protect the Government from the payment of increased costs, in the aggregate;

(2) The net effect of the contemplated contract price or cost adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate;

(3) The net effect of any invoice adjustments made to correct an estimating noncompliance will not result in the recovery of more than the increased costs paid by the Government, in the aggregate; and

(4) The net effect of any interim and final voucher billing adjustments made to correct a cost accumulation noncompliance will not result in the recovery of more than the increased cost paid by the Government, in the aggregate.

(b) *Notice and determination.* (1) Within 15 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall—

(i) Notify the auditor that the CFAO disagrees with the alleged noncompliance; or

(ii) Issue a notice of potential noncompliance to the contractor and provide a copy to the auditor.

(2) The notice of potential noncompliance shall—

(i) Notify the contractor in writing of the exact nature of the noncompliance; and

(ii) Allow the contractor 60 days or other mutually agreeable date to—

(A) Agree or submit reasons why the contractor considers the existing practices to be in compliance; and

(B) Submit rationale to support any written statement that the cost impact of the noncompliance is immaterial.

(3) The CFAO shall—

(i) If applicable, review the reasons why the contractor considers the existing practices to be compliant or the cost impact to be immaterial;

(ii) Make a determination of compliance or noncompliance consistent with 1.704; and

(iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance and the basis for the determination.

(4) If the CFAO makes a determination of noncompliance, the CFAO shall follow the procedures in paragraphs (c) through (h) of this section, as appropriate, unless the CFAO also determines the cost impact is immaterial. If immaterial, the CFAO shall—

(i) Inform the contractor in writing that—

(A) The noncompliance should be corrected; and

(B) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(ii) Conclude the cost-impact process with no contract adjustments.

(c) *Correcting noncompliances.* (1) The clause at 52.230–6 requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance within 60 days after the earlier of—

(i) Agreement with the CFAO that there is a noncompliance; or

(ii) Notification by the CFAO of a determination of noncompliance.

(2) The CFAO, with the assistance of the auditor, should review the proposed change to correct the noncompliance concurrently for adequacy and compliance (see 30.202–7). The CFAO shall—

(i) When the description of the change is both adequate and compliant—

(A) Notify the contractor in writing;

(B) Request that the contractor submit by a specified date a general dollar magnitude (GDM) proposal, unless the CFAO determines the cost impact is immaterial; and

(C) Follow the procedures at paragraph (b)(4) of this section if the CFAO determines the cost impact is immaterial.

(ii) If the description of the change is inadequate, request a revised description of the new cost accounting practice; or

(iii) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO

will determine the cost accounting practice to be noncompliant and process it accordingly.

(d) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in contract and subcontract price or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts affected by the noncompliance.

(ii) When the noncompliance involves cost accumulation, the change in indirect rates multiplied by the applicable base for flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations;

(3) The contractor may submit a DCI proposal in lieu of a GDM proposal provided the DCI proposal is in accordance with paragraph (f) of this section.

(4) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in contract and subcontract prices and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments for fixed-price and flexibly-priced contracts made by the Government during the period of noncompliance; and

(5) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(e) *General dollar magnitude proposal evaluation.* The CFAO shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall follow the requirements in paragraph (b)(4) of this section. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request the contractor submit a revised GDM proposal by a specified date, with specific additional data needed to resolve the cost impact (*e.g.*, an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in contract and subcontract price and cost accumulations); or

(2) Request that the contractor submit a DCI proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(f) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section.

(2) Shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (f)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the information in paragraph (d)(4) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(g) *Interest.* The CFAO shall—

(1) Separately identify interest on any increased cost paid, in the aggregate, as a result of the noncompliance;

(2) Compute interest from the date of overpayment to the date of repayment using the rate specified in 26 U.S.C. 6621(a)(2).

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the contractor used a compliant practice, the difference is decreased cost to the Government;

(4) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice) the difference is decreased cost to the Government;

(5) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the contractor used a compliant practice; and

(6) Calculate the increased cost to the Government in the aggregate.

(i) *Remedies.* If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least $100,000. However, the CFAO has the sole authority for negotiating and resolving the cost impact.

(2) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method.

(3) In resolving the cost impact, the CFAO—

(i) Shall not combine the cost impacts of any of the following:

(A) A required change and a unilateral change.

(B) A required change and a noncompliance.

(C) A desirable change and a unilateral change.

(D) A desirable change and a noncompliance.

(ii) Shall not combine the cost impacts of any of the following unless all of the cost impacts are increased costs to Government:

(A) One or more unilateral changes.

(B) One or more noncompliances.

(C) Unilateral changes and noncompliances; and

(iii) May consider the cost impacts of a unilateral change affecting two or more segments to be a single change if—

(A) The change affects the flow of costs between segments; or

(B) Implements a common cost accounting practice for two or more segments.

(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions on contract costs in resolving the cost impact.

(b) *Negotiations.* The CFAO shall—

(1) Negotiate and resolve the cost impact on behalf of all Government agencies; and

(2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers.

(c) *Contract adjustments.* (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section.

(2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a *pro rata* share of the cost impact based on the ratio of the cost impact of each Executive agency to the total cost impact.

(3) For unilateral changes and noncompliances, the CFAO shall—

(i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;

(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions:

(A) Reduce the contract price on fixed-price contracts.

(B) Disallow costs on flexibly-priced contracts; and

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including contract cost ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a unilateral change shall not be increased (48 CFR 9903.201–6(b)).

(4) For noncompliances that involve estimating costs, the CFAO—

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;

(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts;

(iii) May, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves estimating costs shall not be increased (48 CFR 9903.201–6(d));

(iv) Shall require the contractor to correct the noncompliance, *i.e.*, ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs; and

(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

(5) For noncompliances that involve cost accumulation, the CFAO—

(i) Shall require the contractor to—

(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and

(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the difference between the costs paid using the noncompliant practice and the costs that should have been paid using the compliant practice; or

(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly-priced contracts.

(A) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves cost accumulation shall not be increased (48 CFR 9903.201–6(d)).

(B) Shall require the contractor to—

(*1*) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and

(*2*) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.

(6) When contract adjustments are made, the CFAO shall—

(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or

(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

(d) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method.

(2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in—

(i) An under recovery of monies by the Government (*e.g.*, due to cost overruns); or

(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall—

(i) Apply such exclusion only to the determination of final indirect cost rates (*see* 42.705); and

(ii) Adjust the exclusion to reflect the Government participation rate for flexibly-priced contracts and subcontracts. For example, if there are aggregate increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly-priced contracts and subcontracts, the contractor shall exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor. If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.230–6 to read as follows:

52.230–6 Administration of Cost Accounting Standards.

As prescribed in 30.201–4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (April 2005)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) *Definitions.* As used in this clause—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

Desirable change means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203–1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described 16.203–1(a)(2) at FAR 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230–2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230–2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230–5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230–2 and FAR 52.230–5; or with paragraph (a)(3) of the clause at FAR 52.230–3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230–2 and FAR 52.230–5; or by paragraph (a)(4) of the clause at FAR 52.230–3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603–2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in

FAR 30.603–2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for

flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230–3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230–2, FAR 52.230–3, or FAR 52.230–5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

■ 9. Add section 52.230–7 to read as follows:

52.230–7 Proposal Disclosure—Cost Accounting Practice Changes.

As prescribed in 30.201–3(c), insert the following provision:

Proposal Disclosure—Cost Accounting Practice Changes (Apr 2005)

The offeror shall check ''yes'' below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

☐ Yes ☐ No

If the offeror checked ''Yes'' above, the offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44 and 52

[FAC 2005–01; FAR Case 2003–024; Item VII]

RIN 9000–AK10

Federal Acquisition Regulation; Elimination of Certain Subcontract Notification Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed to amend the Federal Acquisition Regulation language regarding advance notification requirements. This change is required to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, which resulted in revisions to 10 U.S.C. 2306(e).

DATES: *Effective Date*: March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2003–024 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2003–024@gsa.gov*. Include FAC 2005–01, FAR case 2003–024 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2003–024, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, at (202) 501–0044. Please cite FAC 2005–01, FAR case 2003–024.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises FAR 44.201–2, Advance notification requirements, and amends Alternate I of FAR clause 52.244–2, Subcontracts. This change is required in order to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136. Section 842

removes the requirement for contractors under cost-reimbursement contracts with the Department of Defense (DoD), Coast Guard, and National Aeronautics and Space Administration (NASA) to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract.

In addition, the rule makes a technical amendment to Alternate II of FAR clause 52.244–2, Subcontracts. The rule deletes the reference to paragraph (c) from paragraph (f)(2) of Alternate II because paragraph (c) applies to fixed price type contracts, whereas Alternate II applies to cost-reimbursement contracts.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it will have a small positive effect. Also, small businesses do not usually hold prime contracts which are cost-reimbursement contracts, so this section would not apply to them, and any changes would not apply. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. We invite comments from small business concerns and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 44 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2003–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, which went into effect November 24, 2003, and which resulted in revisions to 10 U.S.C. 2306 (e). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 44 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 44 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 2. Revise section 44.201–2 to read as follows:

44.201–2 Advance notification requirements.

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, 10 U.S.C. 2306 requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, 41 U.S.C. 254(b) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.244–2—

■ a. In Alternate I, by removing ''(*Aug 1998*)'' and adding ''(MAR 2005)'' in its place, and revising the first sentence of paragraph (f)(2); and

■ b. In Alternate II, by removing ''(*Aug 1998*)'' and adding ''(MAR 2005)'' in its place, and in paragraph (f)(2) by removing ''(c), (d),'' and adding ''(d)'' in its place. The revised text reads as follows:

52.244–2 Subcontracts.

* * * * *

Alternate I * * *

(f)(2) Unless the Contractor maintains an approved purchasing system, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. * * *

[FR Doc. 05–4092 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAC 2005–01; FAR Case 2002–021; Item VIII]

RIN 9000–AJ75

Federal Acquisition Regulation; Use of FAR Clause 52.244–6, Subcontracts for Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require that the FAR clause, Subcontracts for Commercial Items, be inserted in solicitations and contracts other than those for commercial items.

DATES: *Effective Date*: March 9, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755 for

information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2002–021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

The current clause prescription requires use of the clause in solicitations and contracts for ''supplies or services'' other than commercial items. It is not clear whether this includes solicitations and contracts for construction. The clause matrix at FAR 52.301 lists the clause at 52.244–6 as required for solicitations and contracts for construction.

The revised clause prescription clarifies that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 61302, October 27, 2003. One positive public comment was received supporting the revisions to the clause prescription. This final rule differs from the proposed rule by not adding the phrase ''. . . and includes commercial construction materials but does not include construction itself'' to the definition ''Commercial item'' under paragraph (a) of FAR clause 52.244–6, Definitions. This additional language is unnecessary to clarify the ambiguity between the matrix and the clause prescription. The change at FAR 44.403 and the clause matrix, that already requires the clause in solicitations and contracts for construction, provide sufficient clarity. Also, the additional language in the proposed rule could have been interpreted to conflict with OFPP Memorandum dated July 3, 2003, Applicability of FAR Part 12 to Construction Acquisitions. This rule is not intended to make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a clarification of existing policy. Inclusion of FAR clause 52.244–6 reduces the number of flow down clauses required in subcontracts for commercial items and commercial components.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 44 as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 44 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Revise section 44.403 to read as follows:

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

[FR Doc. 05–4091 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 31, 42, and 52

[FAC 2005–01; Item IX]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date*: March 9, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–05, Technical Amendments.

List of Subjects in 48 CFR Parts 28, 31, 42, and 52

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 28, 31, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 28, 31, 42, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

28.203 [Amended]

■ 2. Amend section 28.203–3 in paragraph (d) by removing ''19'' each time it appears and adding ''20'' in its place.

PART 31—CONTRACT COST PRINCIPALS AND PROCEDURES

31.101 [Amended]

■ 3. Amend section 31.101 by removing from the fifth sentence ''Assistant Administrator for Procurement'' and adding ''Deputy Chief Acquisition Officer'' in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. Revise section 42.203 to read as follows:

42.203 Contract administration services directory.

The Defense Contract Management Agency (DCMA) maintains the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMA and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may access it on the Internet at *http://www.dcma.mil/*. For additional information contact—Defense Contract Management Agency, ATTN: DCMA-DSL, 6350 Walker Lane, Alexandria, VA 22310–3226.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225-13 [Amended]

■ 5. Amend section 52.225–13 by removing from paragraph (b) ''*http://www.epls.gov/TerList1.html*'' and adding ''*http://epls.arnet.gov/News.html*'' in its place.

[FR Doc. 05–4090 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–01 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–01 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

Item	Subject	FAR case	Analyst
I	Improvements in Contracting for Architect-EngineerServices (Interim)	2004–001	Jackson.
II	Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (Interim)	2004–037	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program.	2004–034	Jackson.
*IV	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (Interim).	2004–036	Marshall.
V	Nonavailable Articles—Policy	2003–021	Davis.
VI	Cost Accounting Standards Administration	1999–025	R. C. Loeb.
VII	Elimination of Certain Subcontract Notification Requirements (Interim)	2003–024	Cundiff.
VIII	Use of FAR Clause 52.244-6, Subcontracts for Commercial Items	2002–021	Jackson.
IX	Technical Amendments.		

Item I—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001) (Interim)

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108–136).

Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004–037) (Interim)

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50,000,000 to $75,000,000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108–375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to $75 million. In addition to this change, FAR 6.304(a)(3)(ii) is corrected to replace the outdated GS–16 reference with ''a grade above GS–15.''

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program (FAR Case 2004–034)

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $5,000,000 ($10,000,000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change

implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104–106). The statute allows continued reduction of the burden on contracting officers and industry when acquiring commercial items or items treated as commercial items in accordance with 12.102(f)(1).

Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

Item V—Nonavailable Articles—Policy (FAR Case 2003–021)

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

Item VI—Cost Accounting Standards Administration (FAR Case 1999–025)

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230–6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024) (Interim)

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201–2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

Item VIII—Use of FAR Clause 52.244–6, Subcontracts for Commercial Items (FAR Case 2002–021)

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

Item IX—Technical Amendments

Editorial changes are made at FAR 28.203–3(d), 31.101, 42.203, and 52.225–13(b) in order to update references.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

[FR Doc. 05–4089 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Wednesday,
March 9, 2005

Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, et al.
Hazardous Materials: Requirements for UN Cylinders; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 178, and 180

[Docket No. PHMSA–2005–17463 (HM–220E)]

RIN 2137–AD91

Hazardous Materials: Requirements for UN Cylinders

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

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA proposes to amend the Hazardous Materials Regulations (HMR) to adopt standards for the design, construction, maintenance and use of cylinders and multiple-element gas containers (MEGCs) based on the standards contained in the United Nations (UN) Recommendations on the Transport of Dangerous Goods. Aligning the HMR with the UN Recommendations will promote flexibility, permit the use of technological advances for the manufacture of pressure receptacles, provide for a broader selection of pressure receptacles, reduce the need for exemptions, and facilitate international commerce in the transportation of compressed gases.

DATES: Comments must be received by July 7, 2005.

ADDRESSES: You may submit comments to Docket No. PHMSA–05–17463 (HM–220E) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 202– 493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Comments should identify the docket number (PHMSA–05–17463). If sent by mail, comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Internet users may access all comments received by the Department of Transportation at *http://dms.dot.gov.* Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Duane Pfund, telephone number (202) 366–0656, Assistant International Standards Coordinator; Mark Toughiry, telephone number (202) 366–4545, Office of Hazardous Materials Technology; or Sandra Webb, telephone number (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

List of Topics

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II. Overview of Proposed Changes in This NPRM
III. UN Pressure Receptacles and MEGCs—Design and Construction Requirements
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C. Refillable Seamless Aluminum Alloy Cylinders
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VI. Qualification and Approval Process for Persons Performing Pressure Certifications
A. Inspection Bodies
1. Independent Inspection Agencies (IIAs)
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IX. Summary of Proposed Regulatory Changes by Part
X. Rulemaking Analyses and Notices

I. Background

On October 30, 1998, the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA, we), published a notice of proposed rulemaking (NPRM) under Docket HM–220 (63 FR 58460). In the NPRM, we proposed, among other changes, to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to establish four (4) new metric-marked DOT cylinder specifications to replace twelve (12) current cylinder specifications. The proposed specifications were more performance-oriented than the current DOT cylinder specifications, and were based, in part, on draft standards developed by the International Standards Organization (ISO) and the European Committee for Standardization.

Most commenters objected to adoption of specifications based on draft ISO standards. These commenters were concerned that the draft ISO standards could be changed and that cylinders manufactured to the draft standards might not be accepted for transportation in the world market. The commenters requested that we delay consideration of the proposed metric-marked cylinder specifications until the ISO completed its work on the international cylinder standards, and the UN Sub-Committee of Experts on the Transport of Dangerous Goods incorporated the ISO standards into the UN Recommendations on the Transport of Dangerous Goods (UN Model Regulations). Based on the merits of those comments, we agreed that the proposed metric-marked cylinder standards and related proposals that were based on draft ISO standards should not be adopted. On February 13, 2002, we published a notice withdrawing the metric-marked cylinder standards and related proposals and transferring the remaining proposals to Docket No. HM–220D (67 FR 6667) that was finalized August 8, 2002 (67 FR 51626).

The UN Model Regulations establish international standards for the safe transportation of hazardous materials. The UN Model Regulations are not regulations, but rather recommendations issued by the UN Sub-Committee of Experts on the Transport of Dangerous Goods (UN Sub-Committee of Experts). These recommendations are amended and updated biennially by the UN Sub-Committee of Experts. They serve as the basis for national, regional, and international modal regulations,

including the International Maritime Dangerous Goods (IMDG) Code issued by the International Maritime Organization, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) issued by the ICAO Dangerous Goods Panel. The HMR authorize domestic transportation of hazardous materials shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations, and the transportation of hazardous materials shipments prepared in accordance with the ICAO Technical Instructions for transportation by aircraft and by motor vehicle either before or after being transported by aircraft.

Since 1999, the UN Sub-Committee of Experts has been working to develop international standards for the design, construction, inspection, and testing of cylinders and other pressure receptacles for inclusion in the UN Model Regulations. The objective was to develop requirements that can be globally accepted for international transportation, storage, and use. Representatives from the European Industrial Gases Association, the Compressed Gas Association, the European Cylinder Makers Association, the International Standards Organization Technical Committee 58 (ISO/TC 58), and many specialist government officials, including cylinder experts from DOT, participated in the UN Sub-Committee of Experts' efforts.

The standards developed for cylinders and other gas receptacles address manufacture, approval, filling, and use. The cylinders and other gas receptacles must be in compliance with ISO standards for design, manufacture, and testing; constructed of materials that are compatible with the gas to be contained in the cylinder, as established in ISO standards; and periodically inspected according to ISO standards. The standards were adopted by the UN Sub-Committee of Experts in 2001 and 2004 and are included in the 13th and 14th Edition of the UN Model Regulations. Cylinders manufactured in accordance with these requirements are marked with the internationally recognized UN mark, which ensures that the cylinders are acceptable world-wide.

The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation and at the same time ensures the safety of people, property and the environment. While the intent of the harmonization rulemakings is to align the HMR with international standards, we review and consider each amendment on its own merit. Each amendment is considered on the basis of the overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. To this end, we are proposing to adopt the UN standards for cylinders (pressure receptacles limited to a water capacity of 150 L), tubes (pressure receptacles with a water capacity exceeding 150 L and not more than 3,000 L capacity), cylinder bundles (cylinders held together in a frame and manifolded together with up to a total water capacity of 3,000 L or 1,000 L for toxic gases), and multiple element gas containers (MEGCs) into the HMR. Our proposal does not remove existing requirements for DOT specification cylinders; rather, we propose to incorporate the UN standards so that a shipper may use either a DOT specification cylinder or a UN standard pressure receptacle as appropriate for individual gases and circumstances. The goal of this rulemaking is to promote flexibility and permit the use of advanced technology for the manufacture and use of pressure receptacles, to provide for a broader selection of authorized pressure receptacles, reduce the need for exemptions, and to facilitate international transportation.

DOT technical experts participated in evaluating the ISO standards on which the UN Model Regulations applicable to pressure receptacles are based. We believe that the design, manufacturing, and test requirements provide an equivalent level of safety as the DOT cylinder requirements. Copies of the ISO standards are available for review in the public docket for this rulemaking. The public docket may be viewed in Room PL–401 of the Nassif Building, 400 7th Street, SW., Washington, DC 20590.

II. Overview of Proposed Changes in This NPRM

This NPRM proposes to amend the HMR to incorporate:

—Design, construction and testing requirements for refillable seamless aluminum alloy cylinders conforming to ISO 7866;
—Design, construction and testing requirements for refillable seamless steel cylinders conforming to ISO 9809–1, ISO 9809–2, and ISO 9809–3;
—Design, construction and testing requirements for non-refillable metallic cylinders conforming to ISO 11118;
—Design, construction and testing requirements for composite cylinders conforming to ISO 11119–1, 11119–2 and 11119–3, with certain limitations;
—Design, construction and testing requirement for refillable seamless steel tubes with a water capacity between 150 L and 3,000 L conforming to ISO 11120;
—Design, construction and testing requirements for UN acetylene cylinders conforming to applicable ISO standards, except the cylinders must be refillable, made of stainless steel, filled with a suitable quantity of solvent (solvent-free not authorized) and fitted with suitable fusible plugs;
—Design, construction and testing requirements for MEGCs;
—Requalification of UN pressure receptacles, including pressure receptacles installed as components of MEGCs;
—A quality conformity assessment system for UN pressure receptables consistent with section 6.2.2.5 of the UN Model Regulations;
—A 10-year requalification interval for UN pressure receptacles, except for acetylene and composite cylinders and pressure receptacles used for certain specifically named gases; and
—Filling densities prescribed in P200 of the UN Model Regulations for UN pressure receptacle or the requirements in proposed § 173.302b or § 173.304b in this NPRM.

Consistent with the current HMR, we are proposing to require UN pressure receptacles to meet the pressure relief requirements in § 173.301(f), and aluminum alloy oxygen cylinders to have straight (parallel) threads. In addition, we are proposing to require each new UN pressure receptacle and MEGC design type to be approved by the Associate Administrator and marked with the letters ''USA,'' to identify the United States of America as a country of approval. The USA country of approval marking will be required on all UN pressure receptacles manufactured within or being shipped to, from, or within the United States.

III. UN Pressure Receptacles and MEGCs—Design and Construction Requirements

The UN Model regulations define four types of gas pressure receptacles—gas cylinder, pressure drum, tube and bundle of cylinders. As defined in the UN Model Regulations, a *cylinder* is a

pressure receptacle with a water capacity not exceeding 150 liters. A *pressure drum* is a welded pressure receptacle with a water capacity exceeding 150 liters but not more than 1,000 liters. A *tube* is a seamless pressure receptacle with a water capacity exceeding 150 liters but not more than 3,000 liters. A *bundle of cylinders* is an assembly of cylinders that is fastened together, interconnected by a manifold and transported as a unit; the total water capacity of the bundle may not exceed 3,000 liters, or 1,000 liters when used for Division 2.3 gases.

In this NPRM, we are proposing to adopt the UN Model Regulations requirements for seamless cylinders and tubes, bundles of cylinders, and MEGCs. The ISO has not finalized its design and construction standards for pressure drums or welded cylinders; therefore, we are not proposing to adopt these pressure receptacle requirements in this NPRM. Thus, the term ''pressure receptacle'' as used in this NPRM refers to cylinders and tubes.

We are proposing to provide for a wider selection of pressure receptacles by providing for cylinders, tubes, and MEGCs constructed and certified to the referenced ISO standards and Part 178 requirements. Our present DOT certification system for domestically manufactured seamless cylinders, with the exception of the 3B, 3BN and 3E specifications, requires inspections and verifications of newly produced cylinders to be performed by independent inspection agencies (IIAs). With the exception of cylinders manufactured outside the United States and certain exemption cylinders, PHMSA does not conduct an audit of the cylinder manufacturer's operations prior to initial manufacture.

In this NPRM, we are proposing to require each facility that manufactures UN pressure receptacles within the United States and foreign manufacturers of UN pressures receptacles used for transporting hazardous materials to, from or within the United States to be approved by the Associate Administrator. Approval of a pressure receptacle manufacturer will be accomplished through approval of:

—*Each initial pressure receptacle design type.* Prior to manufacture, each manufacturer of UN pressure receptacles will be required to have each initial pressure receptacle design type reviewed by an IIA and approved by the Associate Administrator.

—*The pressure receptacle manufacturer's quality system.* Each manufacturer of UN pressure receptacles will be required to have its quality system documented in the form of written policies, procedures, and instructions. A manufacturer's technical knowledge, skill and integrity are some factors that provide assurance to pressure receptacle purchasers and the general public that pressure receptacles comply with the HMR and are safe transport of hazardous materials. The current HMR requirements contain no formalized criteria for the assessment of these factors. Each manufacturer will be required to demonstrate its knowledge and technical expertise by manufacturing a production lot while being audited by PHMSA personnel.

—*The production IIA.* During the production run, this IIA has the responsibility for ensuring that each pressure receptacle produced by the manufacturer conforms to the applicable specification requirements. The current application procedures for IIAs in Subpart I of Part 107 would apply. During PHMSA's audit of the pressure receptacle manufacturer, the production IIA will be required to perform all prescribed inspections and verifications during the production run.

—The proposed requirements in § §178.69 and 178.70 for the design and construction of pressure receptacles are consistent with those in the UN Model Regulations, except as noted in the following discussions. All pressure receptacles and MEGCs designed and constructed in full conformance with the applicable requirements will be marked with the UN designation, the letters ''USA,'' and the manufacturer's approval number. Any UN pressure receptacle or MEGC not marked in this manner and with the letters ''USA'' as a country of approval will not be authorized to be filled, offered or accepted for transportation within the United States. We believe this approach will maintain the high level of safety existing within the United States while facilitating trade worldwide.

A. Refillable Seamless Steel Cylinders

This NPRM proposes to allow the use of refillable seamless steel cylinders designed, constructed, and tested to the following standards:

ISO 9809–1 ''Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa.'' This standard specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, and tests at manufacture for refillable quenched and tempered seamless steel gas cylinders with water capacities from 0.5 liter up to and including 150 liters. ISO 9809–1 is applicable to cylinders with a maximum tensile strength of 1,100 MPa for chrome-molybdenum steels or 1,030 MPa for carbon-manganese steels. However, a lower tensile strength applies when there is a risk of hydrogen embrittlement. The materials of construction are similar to those of DOT 3AA specification cylinders made of carbon manganese alloy steel.

ISO 9809–2 ''Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa.'' This standard specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, and tests at manufacture for refillable quenched and tempered seamless steel gas cylinders with water capacities from 0.5 liter up to and including 150 liters. ISO 9809–2 is applicable to cylinders with maximum tensile strength of greater than or equal to 1,100 MPa.

ISO 9809–3 ''Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders.'' This standard specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, and tests at manufacture for refillable normalized or normalized and tempered seamless steel gas cylinders with water capacities from 0.5 liter up to and including 150 liters. Materials for the manufacture of normalized or normalized and tempered gas cylinders are generally classified as carbon-steels, carbon-manganese or manganese-molybdenum steels. The maximum tensile strength for cylinders made from these steels may not exceed 800 MPa. The materials of construction are similar to those of DOT 3A specification cylinders made of carbon or carbon manganese steel. ISO–9809–3 provides that other steels permitted in ISO 9809–1 or ISO 9809–2 for quenched and tempered cylinders may be used and subjected to normalizing and tempering, provided they additionally pass the impact test requirements specified in ISO 9809–1, and the tensile strength does not exceed 950 MPa.

Cylinders with water capacities less than 0.5 liter may also be manufactured and certified to ISO 9809–1, 9809–2 and 9809–3. Cylinders conforming to these standards are authorized for compressed, liquefied, and dissolved gases. These ISO 9809 standards require

that, following final heat treatment at manufacture, all cylinders except those selected for batch testing must be subjected to a hydraulic proof pressure test or a hydraulic volumetric expansion test. The standards permit the purchaser and the manufacturer to decide whether to perform the proof pressure test or volumetric expansion test. We consider the proof pressure test to be essentially a leak test. We are proposing to require this test to be a volumetric expansion test. The volumetric expansion test measures the cylinder's elastic expansion and ensures the adequacy of the physical properties of each cylinder. Further, this initial elastic expansion measurement offers a reference point, or benchmark, for use by requalifiers in evaluating whether the cylinder's wall elastic expansion remains within the prescribed parameters and the cylinder is safe for continued use.

B. Refillable Seamless Steel Tubes

This NPRM proposes to allow use of refillable seamless steel tubes designed, constructed, and tested to the following standard: *ISO 11120* ''Gas cylinders—Refillable seamless steel tubes of water capacity between 150 L and 3,000 L—Design, construction and testing.'' This standard specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, and tests at the time of manufacture for refillable quenched and tempered seamless steel tubes with water capacities from 150 liters up to and including 3,000 liters for compressed and liquefied gases. ISO 11120 is applicable to tubes with a maximum tensile strength of less than 1,100 MPa, except tubes intended for hydrogen bearing gases are limited to a maximum tensile strength of 950 MPa.

C. Refillable Seamless Aluminum Alloy Cylinders

This NPRM proposes to allow use of refillable seamless aluminum alloy cylinders designed, constructed, and tested to the following standard: *ISO 7866* ''Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing.'' This standard specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, and tests at manufacture for refillable seamless aluminum alloy gas cylinders with water capacities from 0.5 liter up to and including 150 liters. The cylinders are for compressed, liquefied, and dissolved gases, other than acetylene.

The UN Model Regulations permit the use of either tapered or straight (parallel) threads in aluminum alloy oxygen cylinders through the incorporation by reference of other ISO standards. However, we are not proposing to allow the use of tapered threads in aluminum alloy cylinders used in oxygen service and transported in the United States. This is consistent with § 173.302(b) of the HMR, which requires each aluminum oxygen cylinder opening to be configured with straight threads only. Requiring the use of straight threads eliminates the possibility of a tapered threaded valve being inadvertently inserted into a straight threaded cylinder opening. Such a mismatch or cross connect could lead to a violent expulsion of the tapered thread valve or unintended release of oxygen.

Within the United States, there are 20 million or more DOT 3AL aluminum alloy cylinders in oxygen service equipped with straight threads. Allowing the use of UN aluminum alloy oxygen cylinders with tapered threads, could increase the potential for inserting improper valves, even though the UN cylinders will be marked with the thread type code, *e.g.* 18P for straight or 25E for tapered. Persons who are not familiar with the ISO thread type codes may assume that the aluminum alloy oxygen cylinder is equipped with straight threads.

The European countries have widely used tapered threads for all gas services; therefore, this mismatching concern may not exist. Although our experience within the United States is with straight thread designs, the use of both thread designs may offer certain advantages. We are asking commenters to address the impact of retaining the prohibition against using tapered threads in aluminum alloy oxygen cylinders.

D. Refillable Seamless Acetylene Cylinders

This NPRM proposes to allow use of refillable acetylene cylinders complying with ISO 9809–1 or ISO 9809–3 and ISO 3807–2 ''Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs.'' ISO 9809–1 and ISO 9809–3 specify the details for design of the cylinder shell. ISO 3807–2 specifies the basic requirements for acetylene cylinders with a maximum nominal water capacity of 150 liters, with shells made from steel and equipped with fusible plugs. It includes procedures for type testing, production batch testing, and the methods for determining the maximum permissible settled pressure in acetylene cylinders and the porosity of the porous mass.

The UN Model Regulations also allow acetylene cylinder shells to be made of aluminum alloy conforming to ISO 7866. We are not proposing to allow the use of aluminum shells for acetylene cylinders transported in the United States. At manufacture, the cylinder shells are filled with a porous mass material and heat cured. The curing temperatures of the porous mass typically range from 260 °C (500 °F) to 371 °C (700 °F) for 24 to 48 hours, depending on the size of the cylinder, until the filler hardens. Exposing an aluminum cylinder to sustained high temperatures over long periods of time may adversely affect the structural integrity of the aluminum, thus making the cylinders unsafe for transportation. Because of this safety concern, we are proposing in this NPRM not to allow the manufacture and use of UN aluminum acetylene cylinders in the United States.

In addition, paragraph 6.2.2.1.3 of the UN Model Regulations allows the manufacture and use of non-refillable acetylene cylinders without fusible plugs. The HMR do not authorize the manufacture or use of non-refillable acetylene cylinders with or without fusible plugs. We have no shipping experience or safety data on the transportation of non-refillable acetylene cylinders. Therefore, we are proposing that acetylene cylinders must be constructed of seamless steel, be refillable and equipped with fusible plugs. We are proposing to prohibit acetylene cylinders not meeting the proposed requirements from transportation and use in the United States.

E. Non-Refillable Metallic Cylinders

This NPRM proposes to allow use of non-refillable metallic cylinders designed, constructed and tested to the following standard: *ISO 11118* ''Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods.'' This standard specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, and test at manufacture for non-refillable metallic gas cylinders of welded, brazed or seamless construction for compressed, liquefied and dissolved gases. As stated above in this preamble, we are proposing not to allow the manufacture or use of non-refillable acetylene cylinders.

F. Refillable Composite Cylinders

This NPRM proposes to allow use of refillable composite cylinders designed, constructed, and tested to the following standards:

ISO 11119–1 ''Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop wrapped composite gas cylinders.'' This

standard specifies requirements for composite gas cylinders up to and including 450 liters water capacity, for compressed or liquefied gases with test pressures up to and including 650 bar. The cylinders consist of a seamless metallic liner over-wrapped with carbon fiber, aramid fiber, or glass fiber (or a combination thereof) in a resin matrix, or steel wire, to provide circumferential reinforcement.

ISO 11119–2 ''Gas cylinders of composite construction—Specifications and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners.'' This standard specifies requirements for composite gas cylinders up to and including 450 liters water capacity, for compressed or liquefied gases with test pressures up to and including 650 bar. The standard addresses fully-wrapped composite cylinders with a load-sharing liner consisting of a seamless metallic liner over-wrapped with carbon fiber, aramid fiber, or glass fiber (or a combination thereof) in a resin matrix, to provide circumferential reinforcement.

ISO 11119–3 ''Gas cylinders of composite construction—Specifications and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-metallic and non-load-sharing metal liners.'' This standard specifies requirements for composite gas cylinders up to and including 450 liters water capacity, for compressed or liquefied gases with test pressures up to and including 650 bar. The cylinders are fully-wrapped composite cylinders with a non-load-sharing metallic or non-metallic liner. The cylinders consist of a liner over-wrapped with carbon fiber or aramid fiber or glass fiber, or a mixture thereof, in a resin matrix to provide longitudinal and circumferential reinforcement.

Depending on their construction, the UN Model Regulations specify design life for composite cylinders certified to ISO 11119–1, 11119–2 and 11119–3 from a minimum design life of 10 years to an unlimited life. We are proposing to require composite cylinders to be designed and constructed to the unlimited life requirements while limiting the service life to not more than 15 years from the date of manufacture. Under the HMR, composite cylinders are currently authorized for construction only under the terms of a DOT exemption. The 15-year service life limitation is consistent with that imposed on composite cylinders authorized under exemptions.

The ISO–11119–3 standard was adopted by the UN Sub-Committee of Experts in December 2004 for the manufacture and use of fully-wrapped composite cylinders with non-metallic and non-load-sharing metal liners. This standard also applies to composite cylinders without liners. Our experience within the United States is with fully-wrapped carbon-fiber reinforced (CFFC) and fiber reinforced plastic (FRP) composite aluminum-lined cylinders. We have no safety data on the use of composite cylinders with non-metallic and non-load-sharing metal liners or without liners. In this NPRM, we are proposing to prohibit in the United States the manufacture and use of fully-wrapped composite cylinders without liners. Under this proposal, ISO–11119–3 cylinders must have either a metallic or non-metallic (plastic) liner. Since the stress distribution of both ISO 11119–2 and 3 designs is handled by the composite shell rather than the liner, the major concern for plastic-lined cylinders made in accordance with ISO 11119–3 is the permeation of toxic and flammable gases at high temperature ranges (130–154 °F). Therefore, in this NPRM we are proposing to prohibit the transportation of toxic gases or toxic gas mixtures meeting the criteria for Division 2.3, Hazard Zone A or B, in ISO 11119–3 cylinders. When used for Division 2.1 materials, the cylinder will be required to have a working pressure not to exceed 62 bar. We are also proposing to prohibit the use of ISO 11119–3 cylinders for underwater breathing applications because of the effects of saltwater on some resins.

G. MEGCs

A MEGC is an assembly of UN cylinders, tubes, or bundles of cylinders interconnected by a manifold and assembled within a framework. The term includes all service equipment and structural equipment necessary for the transport of the gases. We are proposing to prescribe the design type approval procedures and the manufacturing specification requirements for MEGCs in new §§ 178.74 and 178.75 respectively. The proposed requirements are based on the provisions in § 178.275 of the HMR and paragraph 6.7.5 of the UN Model Regulations.

IV. Pressure Receptacles—Initial and Subsequent Design Type Review and Approval Process

We are proposing to implement a conformity assessment system consistent with section 6.2.2.5 in the UN Model Regulations. Under this conformity assessment system, PHMSA, as the United States Competent Authority, will be responsible for implementing a system for providing overall approval of each pressure receptacle design type, the manufacturer's quality system, and inspection bodies. The conformity assessment system requirements in the UN Model Regulations were adopted on the basis of the requirements in ISO Technical Report 14600. The requirements are based on the practices used in Europe, Canada, and the United States for ensuring that cylinder quality is consistent with that prescribed in the ISO design and construction standards.

The initial design type approval consists of an approval of the manufacturer's quality system and of the pressure receptacle design to be produced. (The manufacturer's quality system is discussed later in this preamble.) Under the proposed procedures for approval of the pressure receptacle design type, the manufacturer will select an inspection body, which, as proposed in this NPRM, will be an IIA approved by the Associate Administrator in accordance with the current procedures in Subpart I of Part 107. The manufacturer will submit an application for an initial design type approval to the IIA for review.

The IIA will examine the manufacturer's application for an initial design type approval for completeness. If the application is incomplete, it will be returned to the manufacturer with an explanation. If the IIA verifies that the design conforms to the applicable standards and the requirements contained in Part 178 of the HMR, the manufacturer will fabricate a prototype lot of pressure receptacles in accordance with the design specification. The IIA will verify that the prototype lot conforms to the applicable requirements by witnessing the testing of selected pressure receptacles. If the prototype tests indicate that the pressure receptacles conform to all applicable requirements, the IIA will prepare a design type approval certificate and return the certificate documentation to the manufacturer. The manufacturer will submit the design application to the Associate Administrator for approval. Each application for an initial design type approval must contain the information specified in proposed § 178.70, which includes: (1) The manufacturer's name and the manufacturing facility's address; (2) the designation of the pressure receptacle and the relevant pressure receptacle standard; (3) details of any similar approval application submitted to and denied by another country's competent authority; (4) technical documentation required for design type approval, such as design standards, manufacturing drawings, and design calculations; (5) test reports of the manufactured

prototype lot; and (6) documentation on the manufacturer's quality system.

If the application, design drawings, and quality control documents are found satisfactory, PHMSA will schedule an on-site audit to assess the manufacturing and inspection processes, and test procedures. During the audit by PHMSA personnel, the manufacturer will be required to produce a group of cylinders to the technical standards for which approval is sought. During the production run, the production IIA will perform the required inspections and tests of newly manufactured cylinders. If the procedures and controls are deemed acceptable, test sample cylinders will be selected at random from the production lot and sent to a laboratory designated by PHMSA for verification testing. If the cylinder test samples are found to conform to all the applicable requirements, the Associate Administrator will issue approvals to the manufacturer and the production IIA to authorize the manufacture of the pressure receptacles. The manufacturer will bear the cost of the audit and verification testing.

Under the system proposed in this NPRM, a manufacturer will be required to apply for a new design approval from the Associate Administrator for each new pressure receptacle design type or modification to an approved UN design type. A pressure receptacle will be considered to be of a new design, as specified in the referenced ISO design, construction, and testing standards, when:

1. It is manufactured at a different facility;
2. It is manufactured by a different process;
3. It is manufactured from a material with chemical and mechanical properties different from those specified in the standard;
4. Heat treatment differs from that specified in the standard;
5. The base profile has changed (*e.g.*, concave, convex, hemispherical) or there is a change in the base thickness/cylinder diameter ratio;
6. The overall length of the cylinder has increased by more than 50%;
7. The nominal outside diameter has changed;
8. The design wall thickness has changed;
9. The hydraulic test pressure has been increased; or
10. The guaranteed minimum yield strength and/or the guaranteed minimum tensile strength has changed.

Requests for subsequent UN design type approvals will be reviewed by an IIA for design type approval, and approved by the Associate Administrator. The production IIA and the manufacturer will retain a set of the pressure receptacle design type approval documents for a minimum of 20 years. PHMSA has the authority to modify, suspend or terminate an approval certificate upon evidence that information upon which the approval was based is fraudulent or substantially erroneous, or such action is necessary to adequately protect against risks to life or property. The conditions for suspension or termination of an approval are in proposed § 178.70.

V. MEGCs—Initial Design Type Review and Approval Process

We are proposing to require MEGCs to be reviewed by an approval agency with authorization under the procedures in subpart E of Part 107. The elements (pressure receptacle) installed in the MEGC will be approved as described in section IV of this preamble. The application procedure will be similar to that currently prescribed for the approval of IM and UN portable tanks in § 178.273. The MEGC's manufacturer will submit the application to the approval agency. Each application must include all engineering drawings and calculations necessary for the approval agency to ensure that the MEGC design complies in all respects with the requirements in proposed § 178.75 and documentation showing that the cylinders or tubes comprising the MEGC assembly are approved. An incomplete application will be returned to the applicant with an explanation.

If an application is complete, the approval agency will review the design and arrange with the MEGC manufacturer to witness all required tests. Upon satisfactory completion of the prototype testing, the approval agency will prepare a design type approval certificate and return the certificate and documentation to the manufacturer. The manufacturer will submit the certificate and an approval application to the Associate Administrator. If the application and supporting documentation of the examination and tests performed are acceptable, the Associate Administrator will approve the certificate. The approval agency will be required to maintain a set of the approved drawings and calculations for each MEGC design it reviews and a copy of each initial design type approval certificate approved by the Associate Administrator for at least 20 years. The approval agency will ensure that each MEGC is manufactured to the design type and fully conforms to the applicable requirements. The approval agency will issue a certificate of compliance for each MEGC that is manufactured. The MEGCs will be certified and UN marked as prescribed in proposed § 178.75.

VI. Qualification and Approval Process for Persons Performing Pressure Certifications

A. Inspection Bodies

1. Independent Inspection Agencies (IIAs)

Current § 107.803 of the HMR contains procedures and application criteria for a person seeking approval as an IIA to perform cylinder manufacture, repair or modification inspections and verifications prescribed in Parts 178 and 180. We propose to revise these requirements to include UN pressure receptacles. We are proposing to expand the criteria contained in § 107.803 to permit the selection of any person or organization, foreign as well as domestic, for the duties of an IIA, that is technically competent to perform the prescribed functions. That person or organization must be free from undue influence by persons involved with the fabrication, ownership or movement of the cylinders that the applicant, if approved, would be called upon to evaluate and certify. If an applicant seeking approval to perform the functions of an IIA has its principle place of business in a country other than the United States, the Associate Administrator may approve the applicant on the basis of an approval issued by the Competent Authority of a foreign government. We will recognize UN pressure receptacles manufactured outside the United States and certified by an inspection body certified by another government if that government similarly accepts pressure receptacles manufactured in the United States and approved by an IIA approved by DOT. A foreign inspection body seeking approval from DOT to certify pressure receptacles manufactured outside the United States must submit evidence from that country stating that similar authority is delegated to IIAs and manufacturers of UN pressure receptacles in the United States and that no additional limitations are imposed that are not required of its own citizenry.

2. Approval Agencies

Approval of MEGCs will be handled similarly to the approval of UN portable tanks. For a UN portable tank manufactured in the United States, we require the portable tank design type to be approved by an approval agency. The approval agency must be approved by the Associate Administrator under the procedures in Subpart E of Part 107. In new § 178.74 of this NPRM, we are proposing to require each new MEGC design type to be reviewed by a DOT

designated approval agency. Authorization to perform functions relating to MEGCs must be contained in the approval agency's letter of designation.

B. Manufacturers

The UN procedures for approval of a pressure receptacle manufacturer and the manufacturer's quality system are generally consistent with PHMSA's current procedures under § 107.807 for cylinder manufacturers located outside the United States who perform the chemical analyses and tests of cylinders manufactured to DOT specifications. PHMSA currently performs an on-site audit of the manufacturing and test facilities after a pre-audit has been performed of the manufacturer's prototype design by an IIA.

Under the proposed approval procedures, each manufacturer must have in place a documented quality system as outlined in proposed § 178.69. The manufacturer's quality system involves detailed documentation related to the UN pressure receptacles to be produced, and of written polices, procedures and instructions. The documentation must include (1) adequate descriptions of the organizational structure; (2) responsibilities of personnel with regard to design and product quality; (3) the design control and verification techniques; (4) cylinder manufacturing, quality control, quality assurance and operating instructions; (5) quality records, such as inspection reports, test data, and calibration data; (6) the process for control of documents and their revision; (7) means for control of non-conforming gas cylinders, purchased components, in-process and final materials; and (8) the training for relevant personnel.

The manufacturer's quality system will be audited by PHMSA during the final review of the initial design type approval, as prescribed in proposed § 178.70. The Associate Administrator may perform periodic audits of approved manufacturers to ensure that the manufacturer's quality controls are maintained according to established standards.

C. Requalifiers

Paragraph 6.2.2.6.2.1 of the UN Model Regulations provides that the competent authority must establish an approval system to ensure that the periodic inspection and testing of pressure receptacles conform to the specified requirements. Consistent with our current requirements in § 107.805, any person who requalifies UN pressure receptacles must be approved by the Associate Administrator. Before a cylinder requalifier is approved and issued a requalification identification number (RIN), it must undergo a review and inspection for compliance with DOT requalification procedures; demonstrate knowledge of DOT cylinder regulations, and verify the accuracy of the calibration test equipment. Initially, the applicant will be required to submit an application containing specific information about its testing equipment, procedures, and knowledge. PHMSA will review all submitted documents and, if found satisfactory, the person seeking approval as a requalifier of UN pressure receptacles must arrange for an IIA, approved by the Associate Administrator, to inspect its facility. If the on-site audit reveals that the company has the required knowledge, capabilities and equipment, the Associate Administrator may issue a RIN to that facility to requalify UN pressure receptacles.

VII. UN Cylinders and Tubes—Requalification Requirements

We are proposing to prescribe the requalification requirements for UN pressure receptacles in new § 180.207. Proposed Table I specifies the periodic requalification interval. The standard requalification interval is once every ten years, with certain noted exceptions. A shorter requalification interval of once every five years will apply to pressure receptacles used for any Division 2.3 material, certain specifically named gases, and composite cylinders. These proposed requalification intervals are consistent with those prescribed in the UN Model Regulations.

The requalification procedures for performing the inspections and test will be based on the applicable ISO standards, which depend on the pressure receptacle's material of construction. All refillable pressure receptacles must be given an internal and external visual inspection at the time the requalification is performed.

Steel UN pressure receptacles constructed to ISO 9809–1, 9809–2, 9809–3 with a tensile strength less than 950 MPa, will be required to be subjected to a visual examination and volumetric expansion pressure test in accordance with the procedures in ISO 6406. UN pressure receptacles constructed to ISO 9809–1 or ISO 9809–2 with a tensile strength greater than 950 MPa may be examined by a nondestructive method that is approved by the Associate Administrator. Aluminum UN pressure receptacles constructed to ISO 7866 will be required to be requalified in accordance with the procedures contained in ISO 10461. Both ISO 6406 and 10461 allow pressure receptacles to be pressure tested by either a volumetric expansion test or a proof pressure test, as appropriate for the design specification of the cylinder. We are proposing to require testing by the volumetric expansion test for pressure receptacles with a tensile strength of less than 950 MPa. The volumetric expansion test is an effective method for determining the elastic expansion, which is directly related to the wall thickness of the cylinder, and gives a numerical value that can be used to determine disposition of the cylinder. However, we are soliciting comments on whether requalification by a proof pressure test should be allowed under certain conditions. Note that as proposed in this NPRM, pressure receptacles with a tensile strength of 950 MPa or greater may be examined by a nondestructive method approved by the Associate Administrator.

UN acetylene cylinders will be required to be requalified at 10 year intervals in accordance with the procedures in ISO 10462, except the porous mass and shell must be requalified 3 years, +/−6 months from the date of manufacturer. UN composite cylinders will be required to be subjected to a complete visual inspection and a volumetric expansion test in accordance with the procedures in ISO 11623. These standards contain acceptance/rejection criteria for various types of defects or damage.

The ISO standards do not address the repair of pressure receptacles. We are proposing to authorize limited repair work to UN pressure receptacles, under the terms of an approval issued by the Associate Administrator under Subpart H of Part 107. However, certain repairs, such as the external rethreading of UN tubes for remounting in a MEGC will not require an approval, provided certain conditions are met. These provisions are in proposed § 180.212.

VIII. Pressure Receptacles—Filling Limits

We are proposing to adopt the UN requirements applicable to the filling of UN pressure receptacles. Packing Instruction P200 of the UN Model Regulations establishes certain conditions that must be met when filling UN pressure receptacles with compressed gases and liquefied compressed gases. For compressed gases, the maximum filling limit (filling density) must be such that the working pressure (service pressure) is not greater than two-thirds of the test pressure, and in no case may the internal pressure at 65 °C (149 °F) exceed the test pressure of

the pressure receptacle. For high pressure liquefied compressed gases, the filling limit must be such that the settled pressure at 65 °C (149 °F) will not exceed the test pressure of the pressure receptacles. For low pressure liquefied gases, the maximum mass of contents per liter of water capacity must be less than or equal to 0.95 times the density of the liquid phase at 50 °C (122 °F); in addition, the liquid phase may not fill the pressure receptacle at any temperature less than or equal to 60 °C (140 °F). The test pressure of the pressure receptacle must be at least equal to the vapor pressure (absolute) of the liquid at 65 °C (149 °F), minus 100 kPa (1 bar).

Packing Instruction P200 of the UN Model Regulations allows the maximum filling limit to be determined using specified formulas or filling ratio values provided for a given gas transported in cylinders with specified minimum test pressures. The formulas yield more conservative limits as compared to the values provided in Table 2 of P200 and are primarily intended to be used for gas mixtures. We are proposing to authorize any equally effective method for calculating the filling limits as long as the specified conditions for compressed and high and low pressure liquefied compressed gases are met. We are proposing in new § 173.304b to include the formulas and to allow the use of either the formulas or filling limits in Table 2 of P200 of UN Model Regulations. A research study conducted to verify the filling formulas and specified limits may be reviewed by accessing the docket to this rulemaking at *http://dms.dot.gov*.

IX. Summary of Proposed Regulatory Changes by Part

The following is a summary by part of the more significant proposals of this NPRM.

Part 107

Sections 107.801, 107.803, and 107.805 contain application procedures for persons seeking approval to certify the manufacture, repair, rebuild or requalification of DOT specification cylinders. We are revising these provisions to include UN pressure receptacles and MEGCs.

Part 171

In § 171.7, we are proposing to incorporate by reference several additional ISO standards, and in § 171.8, we are proposing to add definitions for ''bundles of cylinders,'' ''multiple element gas containers or MEGCs,'' ''UN cylinder,'' ''UN pressure receptacle,'' ''UN tube'' and ''working pressure.''

Sections 171.11, 171.12, and 171.12a permit hazardous materials to be transported in accordance with the ICAO Technical Instructions, the IMDG Code, and the Canadian Transport of Dangerous Goods (TDG) Regulations, respectively, under certain conditions. Each of these sections also includes a number of limitations applicable to such transportation. In this NPRM, we are proposing to add several limitations applicable to the use of DOT authorized cylinders and UN pressure receptacles transported in the United States under the ICAO Technical Instructions, the IMDG Code, and the TDG Regulations.

We are proposing to clarify that, notwithstanding the requirements of the ICAO Technical Instructions, IMDG Code, and TDG Regulations, each pressure receptacle transported in accordance with §§ 171.11, 171.12, and 171.12a must be equipped with a pressure relief device (PRD) when required by § 173.301(f) of the HMR. The UN Model Regulations, the ICAO Technical Instructions, IMDG Code, and the TDG Regulations provide that pressure receptacles must be equipped with a PRD when used for carbon dioxide (UN 1013), nitrous oxide (UN 1070) or required by the country of use. A PRD can prevent a dangerous build-up of pressure that could result in a cylinder leak or rupture. Therefore, in the interest of safety, pressure receptacles shipped to, from or within the United States must be fitted with PRDs consistent with the requirements in § 173.301(f), including the PRD requirements in CGA Pamphlet S–1.1. As discussed earlier in this preamble, we are also proposing to require that the prototype design for all UN pressure receptacles manufactured or used for transporting hazardous materials within the United States must be approved by the Associate Administrator. These requirements are applicable to each pressure receptacle, including those assembled in MEGCs and bundles. Each approved pressure receptacle will be required to be marked with the letters ''USA'' followed by the manufacturer's approval number. This approach will readily identify the approved pressure receptacles and provide assurance that any UN pressure receptacle imported for use within the United States will be similar in strength, durability and quality as the DOT specification and UN pressure receptacles manufactured within the United States. To obtain a design type approval, the pressure receptacle manufacturers will be required to comply with the approval and manufacturing requirements proposed in Part 178 of this NPRM. As a part of the approval process, the pressure receptacle manufacturer's quality system and operating processes must be audited by PHMSA personnel as discussed earlier in this preamble. We believe this approach will maintain the high level of safety existing within the United States while facilitating trade worldwide.

Readers should be aware that we are proposing other changes to §§ 171.11, 171.12, 171.12a and certain other sections addressed in this NPRM under separate rulemaking actions. Therefore, the requirements proposed herein, if adopted in a final rule, may be placed in a different paragraph or section.

Part 172

In § 172.101, we are proposing to make various amendments to the Hazardous Materials Table (HMT). In a final rule published July 31, 2003 (Docket No. RSPA 2002–13658 (HM–215E), 68 FR 44992), we revised eleven entries by removing the qualifying word ''compressed.'' The eleven entries are as follows:

1008 Boron triflouride
2417 Carbonyl fluoride
1911 Diborane
1962 Ethylene
2193 Hexafluoroethane or Refrigerant
2451 Nitrogen triflouride
2198 Phosphorous pentafluoride
2203 Silane
1859 Silicon tetrafluoride
1982 Tetrafluoromethane *or* Refrigerant gas R14
2036 Xenon

We made the revisions for consistency with another amendment that revised the reference temperature used in the definitions of a non-liquefied and liquified compressed gas § 173.115(d) and (e), respectively, from 20 °C (70 °F) to −50 °C (−58 °F), consistent with internationally accepted definitions for gases adopted in the Twelfth Edition of the UN Model Regulations.

We also divided the compressed liquefied gases into high and low pressure categories. In the July 31, 2003 final rule, we stated that in a separate rulemaking we would address whether the named gases should be reassigned to more appropriate packaging sections. We also stated that we would address the use of the high- and low-pressure compressed liquefied gas designations. Upon further consideration, we believe the packaging authorizations should remain in § 173.302 rather than being reassigned to other packaging sections. The UN Model Regulations define a ''compressed gas,'' as a gas that when packaged under pressure for transport, is entirely gaseous at −50 °C (−58 °F); this category includes all gases with a

critical temperature less than or equal to −50 °C (−58 °F). The UN Sub-Committee of Experts removed the descriptor ''compressed'' from the shipping names because the gases are partially liquid at temperatures above −50 °C (−58 °F) when packaged under pressure for transport. We believe these gases seldom encounter temperatures of −50 °C (−58 °F) and below when transported within the United States and, therefore, changing the packaging authorizations is not warranted. However, we are soliciting comments on whether the packaging authorization for these gases should remain as § 173.302 or be relocated to § 173.304.

We are proposing to add seven new special provisions to certain entries in the HMT. New special provision N86 would be added to 21 entries. The special provision prohibits the shipment of these gases in UN pressure receptacles made of aluminum. The 21 entries are as follows:

1001 Acetylene
1017 Chlorine
1037 Ethyl chloride
1045 Fluorine, compressed
1048 Hydrogen bromide, anhydrous
1050 Hydrogen chloride, anhydrous
1052 Hydrogen fluoride, anhydrous
1062 Methyl bromide
1063 Methyl chloride *or* Refrigerant gas R 40
1085 Vinyl bromide, stabilized
1086 Vinyl chloride, stabilized
1581 Chloropicrin and Methyl bromide mixture
1582 Chloropicrin and Methyl chloride mixture
1749 Chlorine trifluoride
1860 Vinyl fluoride, stabilized
1912 Methyl chloride and Methylene chloride mixture
2190 Oxygen difluoride, compressed
2196 Tungsten hexafluoride
2197 Hydrogen iodide, anhydrous
2548 Chlorine pentafluoride
2901 Bromine chloride

—New special provision N87 would be added to eight entries. The special provision prohibits the shipment of these gases in UN pressure receptacles with copper valves. The eight entries are:

1005 Ammonia, anhydrous
1032 Dimethylamine, anhydrous
1036 Ethylamine
1043 Fertilizer ammoniating solution *with free ammonia*
1061 Methylamine, anhydrous
1083 Trimethylamine, anhydrous
2073 Ammonia solution, *relative density less than 0.880 at 15 °C in water, with more than 35% but not more than 50% ammonia.*
3318 Ammonia solution, *relative density less than 0.880 at 15 °C in water, with more than 50% ammonia.*

—New special provision N88 would be added to three entries. The special provision provides that the UN pressure receptacle's metal parts in contact with the gas must contain no more than 65% copper. The three entries are:

1001 Acetylene, dissolved
1060 Methyl acetylene and propadiene mixtures, stabilized
2452 Ethylacetylene, stabilized

—New special provision N89 would be added to fourteen entries. The special provision provides that when steel UN pressure receptacles are used, only those bearing an ''H'' mark are authorized. The fourteen entries are:

1048 Hydrogen bromide, anhydrous
1049 Hydrogen, compressed
1050 Hydrogen chloride, anhydrous
1053 Hydrogen sulphide
1064 Methyl mercaptan
1911 Diborane
1957 Deuterium, compressed
2034 Hydrogen and Methane mixture, compressed
2188 Arsine
2192 Germane
2197 Hydrogen iodide, anhdrous
2199 Phosphine
2203 Silane
2600 Carbon monoxide and Hydrogen mixture, compressed

Part 173

In Part 173, we are proposing to add authorizations for the use of UN pressure receptacles in a number of sections consistent with the requirements in the UN Model Regulations. In § 173.40, we are proposing to limit a UN cylinder used for Hazard Zone A or B material to a maximum water capacity of 85 liters. The cylinder must have a minimum test pressure of 200 bar and a minimum wall thickness of 3.5 mm if made of aluminum alloy or 2 mm if made of steel or, alternatively, be packed in an outer packaging meeting the Packing Group I performance level. We are prohibiting the transport of Hazard Zone A material in UN tubes and MEGCs.

In § 173.301, we are proposing to revise the general requirements for shipment of hazardous materials in cylinders to apply to UN pressure receptacles. However, UN pressure receptacles would not be required to meet the requirements for cylinder valve protection in paragraph (h) and for cylinders mounted on a motor vehicle or in frames in paragraph (i). These particular requirements for UN pressure receptacles would be contained in new § 173.301b. The requirements applicable to MEGCs would be contained in new § 173.312.

New § 173.301b would contain additional general requirements for the shipment of hazardous materials in UN pressure receptacles. We are proposing that gas or gas mixtures must be compatible with the pressure receptacle and valve material in accordance with ISO 11114–1 for metallic materials or ISO 11114–2 for non-metallic materials. When a refillable pressure receptacle is filled with a gas different from that previously contained in the cylinder, prior to refilling, the cylinder must be cleaned in accordance with ISO 11621. A UN pressure receptacle must have its valve protected in accordance with the methods prescribed in § 173.301(h). Finally, under paragraph (g), a non-refillable UN pressure receptacle will be required to have a water capacity not exceeding 1.25 liters and must be transported as an inner packaging. The use of a non-refillable UN pressure receptacle would be prohibited for a toxic gas with an LC_{50} of 200 ml/mg or less.

New § 173.302b would contain the filling requirements for UN pressure receptacles used to transport non-liquefied (permanent) gases as discussed earlier in this preamble under the heading ''V. Pressure Receptacles—Filling limits.''

In § 173.303, we are proposing to authorize the use of UN cylinders and bundles of cylinders for acetylene. The cylinder must conform to the basic requirements and have fusible plugs in accordance with ISO 3807–2.

New § 173.304b would contain specific requirements for filling a UN pressure receptacle with a liquefied gas as discussed earlier in this preamble under the heading ''V. Pressure Receptacles—Filling limits.''

New § 173.312 would contain requirements for the use of MEGCs. A MEGC must conform to the design, construction, inspection and testing requirements contained in proposed § 178.75. Consistent with the requirements in the UN Model Regulations, each pressure receptacle used for other than a Division 2.2 permanent gas would be required to be equipped with an individual shutoff valve. Additionally, for a Division 2.1 gas, the pressure receptacles must be isolated by a valve into assemblies of not more than 3,000 liters. Consistent with the requirements for the manifolding of DOT specification cylinders in § 173.301(g), we are proposing that the pressure receptacles may not be filled in excess of the lowest marked working pressure of any given pressure receptacle.

In § 173.336, we are proposing to authorize the transport of nitrogen dioxide, liquefied and dinitrogen tetroxide, liquefied in UN cylinders.

The use of UN tubes and MEGCs would not be authorized. In addition, we are proposing to correct an inconsistency in the current requirements. We are adding a provision, currently contained in § 173.337, that requires the cylinders to be equipped with a stainless steel valve and valve seat that will not deteriorate if in contact with nitrogen dioxide. The provision would be removed in § 173.337.

Part 178

We propose to add several new sections to Part 178. Section 178.69 would contain the responsibilities and requirements applicable to manufacturers of UN pressure receptacles. Sections 178.70 and 178.71 would contain requirements for the approval of a new pressure receptacle design type and the manufacturing specifications for the pressure receptacle, respectively. Sections 178.74 and 178.75 would contain requirements applicable to the approval of a new MEGC design type and the manufacturing specifications for MEGCs, respectively. The requirements are discussed earlier in this preamble.

Part 180

We are proposing to revise the requirements in Subpart C in Part 180 to include the requalification of UN pressure receptacles and MEGCs. These requirements are discussed earlier in this preamble under the heading ''UN Cylinders and Tubes—Requalifications.''

X. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM will align the HMR with the UN Model Regulations, which will (1) promote flexibility; (2) permit the use of technological advances for the manufacture of pressure receptacles; (3) provide for a broader selection of pressure receptacles; (4) reduce the need for exemptions to the existing regulations; and (5) facilitate international commerce in the transportation of compressed gases while maintaining a level of safety at least equal to that achieved under the HMR. To this end, as discussed in detail earlier in this preamble, the final rule amends the HMR to more fully align it with the biennial updates of the UN Recommendations, the IMDG Code and the ICAO Technical Instructions to facilitate the transport of hazardous materials in international commerce.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This NPRM amends the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail earlier in this preamble, the final rule incorporates changes into the HMR based on the Thirteenth Revised Edition of the UN Recommendation, Amendment 32 to the IMDG Code, and the 2005–2006 ICAO Technical Instructions, which became effective January 1, 2005. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation; at the same time, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as discussed in detail earlier in this preamble, there are several instances where we elected not to adopt a specific provision of the UN Model Regulations, the IMDG Code or the ICAO Technical Instructions. Further, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is a not considered a significant regulatory action under section 3(f) of Executive Order 12866 or the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This NPRM was not reviewed by the Office of Management and Budget. A regulatory evaluation is in the docket for this rulemaking.

This NRPM proposes to add provisions to the HMR, based on the standards contained in the United Nations Model Regulations, that would permit the design, construction, maintenance, and use of seamless UN pressure receptacles and MEGCs. The proposed changes would provide shippers with an optional means of compliance; therefore, any increased compliance costs associated with the proposals in this NPRM would be incurred voluntarily by the compressed gas industry. Ultimately, we expect each company to make reasonable decisions based on its own business operations and future goals. Thus, costs incurred if a company elects to manufacture or use UN pressure receptacles and MECGs would be balanced by the benefits (*e.g.*, access to foreign markets) accruing from this decision.

More broadly, this NPRM proposes to harmonize the requirements in the HMR for the manufacture and use of cylinders with international standards in the UN Model Regulations. Harmonization of the HMR with international standards will eliminate inconsistencies between the regulations, thereby facilitating efficient transportation of hazardous materials in pressure receptacles across national or international borders. More importantly, harmonized regulations reduce the potential for misunderstanding and confusion and, thus, enhance safety.

C. Executive Order 13132

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

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

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

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

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

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

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

This proposed rule addresses covered subject items (1), (2), (3), and (5) described above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to harmonize domestic regulations for the transportation of hazardous materials in cylinders with international standards.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes that the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

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

E. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. This rule imposes only minimal new costs of compliance on the regulated industry. Based on the assessment in the regulatory evaluation, I hereby certify that while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

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

Need for the NPRM. Current requirements for the manufacture, use, and requalification of cylinders can be traced to standards first applied in the early 1900s. Over the years, the regulations have been revised to reflect advancements in transportation efficiency and changes in the national and international economic environment. The changes proposed in this NPRM would permit shippers to use either current DOT specification cylinders or the new seamless UN pressure receptacles and MEGCs for the transportation of compressed gases. This action is being taken to facilitate international transportation, increase flexibility for the regulated community and promote technological advancement while maintaining a comparable level of safety.

Description of action. In this NPRM, we are proposing to add optional requirements for the manufacture, maintenance, testing, and use of UN pressure receptacles and to adopt a qualification and approval process for persons who choose to certify refillable UN pressure receptacles.

Identification of potentially affected small entities. Businesses likely to be affected by the final rule are cylinder manufacturers, cylinder requalifiers, independent inspection agencies, and commercial establishments that own and use DOT specification cylinders. There are approximately three United States manufacturers of seamless pressure receptacles. In addition, the Associate Administrator has approved approximately 2,150 active domestic cylinder requalifiers and seven domestic independent inspection agencies. There are also approximately two facilities approved to perform seamless cylinder repairs. Cylinder requalifiers include businesses that manage large fleets of cylinders, such as cylinders filled with propane to power forklift trucks and for use by retail customers through cylinder exchange programs. There are literally hundreds of thousands of commercial establishments that own and use cylinders manufactured to DOT specifications. These business sectors include agriculture; mining; construction; manufacturing; transportation; communications; electric, gas, and sanitary services; wholesale trade; retail trade; and other services.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on 1997 data compiled by the U.S. Census Bureau, it appears that upwards of 97 percent of firms subject to this final rule are small businesses. For the most part, these entities will incur minimal costs to comply with the provisions of this NPRM. The proposed provisions are optional; companies will choose to expand their operations to include UN pressure receptacles based on their ability to offset any additional costs.

Reporting and recordkeeping requirements. Consistent with the UN Model Regulations, the NPRM includes a new recordkeeping requirement for a proposed quality control system for facilities that manufacture UN pressure receptacles in the United States. The requirements will affect about 60 cylinder manufacturers; we anticipate that each manufacturer may incur minimal costs each year to comply with the new requirement.

Related Federal rules and regulations. With respect to the transportation of compressed gases in cylinders, there are no related rules or regulations issued by other department or agencies of the Federal government.

Alternate proposals for small business. While certain regulatory actions may affect the competitive situation of an individual company or group of companies by imposing relatively greater burdens on small rather than large enterprises, we do no believe that this will be the case with the proposed rule. The requirements for the manufacture, testing, and use of UN pressure receptacles as proposed in this NPRM are optional. Ultimately, we expect each company to make reasonable decisions based on its own business operations and future goals. Thus, the costs incurred if a company elects to manufacture or use UN pressure receptacles and MECGs would be balanced by the benefits (*e.g.*, access to foreign markets) accruing from this decision.

Conclusion. I certify that the proposals in this NPRM would not have a significant economic impact on a substantial number of small entities. The costs associated with this proposed rule will be assumed voluntarily based on a company's ability to offset the costs with benefits such as increased access to foreign markets. Indeed, adoption of the UN pressure receptacle standards should result in overall cost savings to those who choose to utilize them and will ease the regulatory compliance burden for shippers engaged in international commerce, including trans-border shipments in North America.

F. Paperwork Reduction Act

This proposed rule may result in a small increase in annual burden and costs based on a new information collection requirement. These proposals regarding the design, construction, maintenance and use of UN cylinders which result in a revised information collection requirement have been submitted to the Office of Management and Budget (OMB) for review and approval under OMB Control No. 2137–XXXX, ''Requirements for UN Cylinders.''

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the total information collection and recordkeeping burden for the current requirements and as proposed in this rule would be as follows:

OMB No. 2137–XXXX:

Total Annual Number of Respondents: 50.

Total Annual Responses: 150.

Total Annual Burden Hours: 900.

Total Annual Burden Cost: $22,500.00.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Direct your requests for a copy of the information collection to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget at fax number, 202–395–6974. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to the Office of Management and Budget for approval.

G. Unfunded Mandates Reform Act of 1995

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

H. Regulation Identifier Number (RIN)

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

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. PHMSA proposes changes to certain HMR requirements for the transportation of hazardous materials in cylinders in order to promote safer transportation practices, facilitate international commerce, and make these requirements compatible with international standards regarding such transportation.

J. Privacy Act

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

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

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

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. Section 107.801(a) is revised to read as follows:

§ 107.801 Purpose and scope.

(a) This subpart prescribes procedures for—

(1) A person who seeks approval to be an independent inspection agency to perform production tests, inspections, verifications, and certifications of DOT specification cylinders or UN pressure receptacles as required by parts 178 and 180 of this chapter;

(2) A person who seeks approval to engage in the requalification (*e.g.* inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN standard, under subchapter C of this chapter or under the terms of an exemption issued under this part;

(3) A person who seeks approval to perform the manufacturing chemical analyses and tests of DOT specification or exemption cylinders outside the United States, or UN pressure receptacles.

* * * * *

3. In § 107.803, the section heading is revised, paragraph (c)(8) is redesignated as paragraph (c)(9), and a new paragraph (c)(8) is added to read as follows:

§ 107.803 Approval of an independent inspection agency (IIA).

* * * * *

(c) * * *

(8) If the applicant's principal place of business is in a country other than the United States, the Associate Administrator may approve the applicant on the basis of an approval issued by the Competent Authority of the country of manufacture. The Competent Authority must maintain a current listing of approved IIAs and their identification marks. The applicant must provide the following information:

(i) A copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT or UN designation is sought; and

(ii) Written evidence that the Competent Authority of that country provides reciprocal treatment to IIAs who are approved under this subpart and to UN standard packaging manufactured in accordance with this subchapter and that no condition or limitation will be imposed upon a United States citizen or organization that is not required of its own citizenry.

* * * * *

4. In § 107.805, the section heading and paragraphs (a), (c)(2), and (d) are revised to read as follows:

§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

(a) *General.* A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification or a UN pressure receptacle under subpart C of part 178 or subpart C of part 180 of this subchapter, or under the terms of an exemption issued under this part.

* * * * *

(c) * * *

(2) The types of DOT specification or exemption cylinders, or UN pressure receptacles that will be inspected, tested, repaired, or rebuilt at the facility;

* * * * *

(d) *Issuance of requalifier identification number (RIN).* The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification or exemption cylinders, or UN pressure receptacles if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of Part 180 of this subchapter.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub L. 104–134 section 31001.

6. In § 171.7, in the table in paragraph (a)(3):

a. under General Services Administration, the entry Federal Specification RR–C–901 is revised; and

b. under *International Organization for Standardization,* the entry ISO 4126–1 is revised and 21 new entries are added to read in alphanumeric order as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
General Services Administration	
* * * * * * *	
Federal Specification RR–C–901D, Cylinders, Compressed Gas: Seamless Shatterproof, High Pressure DOT 3AA Steel, and 3AL Aluminum, February 21, 2003 (Superseding RR–C–901C, 1981).	173.302; 173.304; 173.336; 173.337.
International Organization for Standardization	
* * * * * * *	
ISO 1496–3 Series 1, Freight containers—Specification and testing—Part 3: Tank containers for liquids, gases and pressurized dry bulk 1995 (E).	178.74; 178.75.
ISO 3807–2, Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs, 2000 (E)	173.303; 178.71.
ISO 4126–1, Safety valves—Part 1: General requirements, December 15, 1991, First Edition (E)	178.75, 178.274.
ISO 6406, Periodic inspection and testing of seamless steel gas cylinders, 2004 (E)	180.207.
ISO 7225, Gas cylinders—Precautionary labels, 1994 (E)	178.71.
ISO 7866, Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing, 1999 (E)	178.71.
ISO 9809–1, Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., 1999 (E).	178.71; 178.75.
ISO 9809–2, Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., 2000 (E).	178.71; 178.75.
ISO 9809–3, Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, 2000 (E).	178.71; 178.75.
ISO 10297, Gas cylinders—Refillable gas cylinder valves— Specification and type testing, 1999 (E)	173.301b.

Source and name of material	49 CFR reference
ISO 10461, Seamless aluminum—alloy gas cylinders—Periodic inspection and testing, 2004 (E)	180.205.
ISO 10462, Cylinders for dissolved acetylene—Periodic inspection and maintenance, 2004 (E)	180.205.
ISO 11114–1, Transportable gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials, 1997 (E).	173.301b; 178.71.
ISO 11114–2, Transportable gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials, 2000 (E).	173.301b; 178.71.
ISO 11117, Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders—Design, construction and tests, 1998 (E).	173.301b.
ISO 11118, Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, 1999 (E)	178.71.
ISO 11119–1, Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, 2002.	178.71.
ISO 11119–2, Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, 2002.	178.71
ISO 11119–3, Gas cylinders of composite construction—Specifications and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-metallic and non-load-sharing metal liners, 2002.	178.71.
ISO 11120, Gas cylinders—Refillable seamless steel tubes of water capacity between 150 L and 3000 L—Design, construction and testing, 1999 (E).	178.71; 178.75.
ISO 11621, Gas cylinders—Procedures for change of gas service, 1997 (E)	173.302.
ISO 11623, Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, 2002	180.207.

* * * * * * *

7. In § 171.8, definitions for ''bundles of cylinders,'' ''multiple element gas containers or MEGCs,'' ''UN cylinder,'' ''UN pressure receptacle,'' ''UN tube'' and ''working pressure'' are added in alphabetical order to read as follows:

§ 171.8 Definitions.

* * * * *

Bundles of cylinders means assemblies of UN cylinders that are fastened together and interconnected by a manifold and transported as a unit. The total water capacity for the bundle may not exceed 3,000 L, except that bundles intended for the transport of gases in Division 2.3 are limited to a water capacity of 1,000 L.

* * * * *

Multiple-element gas containers or MEGCs means assemblies of UN cylinders, tubes, or bundles of cylinders interconnected by a manifold and assembled within a framework. The term includes all service equipment and structural equipment necessary for the transport of gases.

* * * * *

UN cylinder means a transportable pressure receptacle with a water capacity not exceeding 150 L that has been marked and certified as conforming to the applicable requirements in part 178 of this subchapter.

* * * * *

UN pressure receptacle means a UN cylinder or tube.

* * * * *

UN tube means a seamless transportable pressure receptacle with a water capacity exceeding 150 L but not more than 3,000 L that has been marked and certified as conforming to the requirements in part 178 of this subchapter.

* * * * *

Working pressure for purposes of UN pressure receptacles, means the settled pressure of a compressed gas at a reference temperature of 15 °C (59 °F).

* * * * *

8. In § 171.11, paragraph (d)(19) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(19) Cylinders transported to, from, or within the United States must conform to the applicable requirements of this subchapter. Unless otherwise excepted in this subchapter, a cylinder may not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, except that cylinders not conforming to these requirements must meet the requirements in § 173.301(j) through (k);

(ii) The cylinder is equipped with a pressure relief device in accordance with § 173.301(f) of this subchapter and conforms to the applicable requirements in part 173 for the hazardous material involved;

(v) For aluminum cylinders in oxygen service, except those used aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations, the opening is configured with straight (parallel) threads (UN cylinders are marked with the cylinder thread type, e.g. ''18P'' or ''18S''); and

(vi) A UN cylinder is marked with ''USA'' as a country of approval in conformance with §§ 178.69 and 178.70 of this subchapter.

9. In § 171.12, paragraph (b)(15) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(15) Cylinders transported to, from, or within the United States must conform to the applicable requirements of this subchapter. Unless otherwise excepted in this subchapter, a cylinder may not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, except that cylinders not conforming to these requirement must meet the requirements in § 173.301(j) through (k) of this subchapter;

(ii) The cylinder is equipped with a pressure relief device in accordance with § 173.301(f) of this subchapter and conforms to the applicable requirements in part 173 of this subchapter for the hazardous material involved;

(iii) For aluminum cylinders in oxygen service used for other than aircraft parts, the opening is configured with straight (parallel) threads (UN cylinders are marked with the cylinder thread marking, e.g. ''18P'' or ''18S''); and

(vi) A UN cylinder is marked with ''USA'' as a country of approval in conformance with §§ 178.69 and 178.70 of this subchapter.

* * * * *

10. In § 171.12a, paragraph (b)(13) is revised to read as follows:

§ 171.12a Canadian shipments and packagings

* * * * *

(b) * * *

(13) When the provisions of this subchapter require that a DOT specification or a UN standard packaging must be used for a hazardous material, a packaging authorized by the TDG Regulations may be used only if it corresponds to the DOT specification or UN standard authorized by this subchapter. Unless otherwise excepted in this subchapter, a cylinder may not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, except that cylinders not conforming to these requirements must meet the requirements in § 173.301(j) through (k) of this subchapter;

(ii) The cylinder is a UN cylinder marked with the letters ''CAN'' for Canada as country of manufacture or a country of approval;

(iii) The cylinder conforms to the applicable requirements in part 173 of this subchapter for the hazardous material involved; and

(v) For aluminum cylinders in oxygen service used for other than aircraft parts, the opening is configured with straight (parallel) threads (UN cylinders are marked with the cylinder thread type, e.g. ''18P'' or ''18S'').

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

11. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.53.

12. In the § 172.101 Hazardous Materials Table, the following entries are revised to read as follows:

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*		*	*	*			
	Acetylene, dissolved	2.1	UN1001		2.1	N88	None	303	None	Forbidden	15 kg	D	25, 40, 57
	*		*		*	*		*	*	*			
	Acetylene, solvent free	*Forbidden.*											
	*		*		*	*		*	*	*			
	Ammonia, anhydrous	2.3	UN1005		2.3, 8	4, N87, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 57
	*		*		*	*		*	*	*			
I	Ammonia solution, relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.	2.2	UN3318		2.3, 8	4, N87, T50	None	304	314, 315	Forbidden	Fobidden	D	40, 57
	*		*		*	*		*	*	*			
	Ammonia solution, relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia.	2.2	UN2073		2.2	N87	306	304	314, 315	Forbidden	150 kg	E	40, 57
	Arsine	2.3	UN2188		2.3, 2.1	1, N89	None	192	245	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Bromine chloride	2.3	UN2901		2.3, 8, 5.1.	2, B9, B14, N86	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
	*		*		*	*		*	*	*			
	Carbon monoxide and hydrogen mixture, compressed.	2.3	UN2600		2.3, 2.1	6, N89	None	302	302	Forbidden	Forbidden	D	40, 57
	*		*		*	*		*	*	*			
	Chlorine	2.3	UN1017		2.3, 8	2, B9, B14, N86, T50, TP19.	None	304	314, 315	Forbidden	Forbidden	D	40, 51, 55, 62, 68, 89, 90
	*		*		*	*		*	*	*			
	Chlorine pentafluoride	2.3	UN2548		2.3, 5.1, 8.	1, B7, B9, B14, N86.	None	304	314	Forbidden	Forbidden	D	40, 89, 90
	*		*		*	*		*	*	*			
	Chlorine trifluoride	2.3	UN1749		2.3, 5.1, 8.	2, B7, B9, B14, N86.	None	304	314	Forbidden	Forbidden	D	40, 89, 90
	*		*		*	*		*	*	*			
	Chloropicrin and methyl bromide mixtures.	2.3	UN1581		2.3	2, B9, B14, N86, T50.	None	193	314, 315	Forbidden	Forbidden	D	25, 40
	*		*		*	*		*	*	*			
	Chloropicrin and methyl chloride mixtures.	2.3	UN1582		2.3	2, N86, T50	None	193	245	Forbidden	Forbidden	D	25, 40
	*		*		*	*		*	*	*			
	Deuterium, compressed	2.1	UN1957		2.1	N89	306	302	None	Forbidden	150 kg	E	40

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*		*	*	*			
	Diborane	2.3	UN1911		2.3, 2.1	1, N89	None	302	None	Forbidden	Forbidden	D	40, 57
	*		*		*	*		*	*	*			
	Dimethylamine, anhydrous	2.1	UN1032		2.1	N87, T50	None	304	314, 315	Forbidden	150 kg	D	40
	*		*		*	*		*	*	*			
	Ethyl chloride	2.1	UN1037		2.1	B77, N86, T50	None	322	314, 315	Forbidden	150 kg	B	40
	*		*		*	*		*	*	*			
	Ethylacetylene, stabilized	2.1	UN2452		2.1	N88	None	304	314, 315	Forbidden	150 kg	B	40
	*		*		*	*		*	*	*			
	Ethylamine	2.1	UN1036		2.1	B77, N87, T50	None	321	314, 315	Forbidden	150 kg	D	40
	*		*		*	*		*	*	*			
	Fertilizer ammoniating solution *with free ammonia*.	2.2	UN1043		2.2	N87	306	304	314, 315	Forbidden	150 kg	E	40
	*		*		*	*		*	*	*			
	Fluorine, compressed	2.3	UN1045		2.3, 5.1, 8.	1, N86	None	302	None	Forbidden	Forbidden	D	40, 89, 90
	*		*		*	*		*	*	*			
	Germane	2.3	UN2192		2.3, 2.1	2, N89	None	302	245	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Hydrogen and Methane mixtures, compressed.	2.1	UN2034		2.1	N89	306	302	302, 314, 315.	Forbidden	150 kg	E	40, 57
	*		*		*	*		*	*	*			
	Hydrogen bromide, anhydrous	2.3	UN1048		2.3, 8	3, B14, N86, N89.	None	304	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Hydrogen chloride, anhydrous	2.3	UN1050		2.3, 8	3, N86, N89	None	304	None	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Hydrogen, compressed	2.1	UN1049		2.1	N89	306	302	302, 314	Forbidden	150 kg	E	40, 57
	*		*		*	*		*	*	*			
	Hydrogen fluoride, anhydrous	8	UN1052	I	8, 6.1	3, B7, B46, B71, B77, N86, T10, TP2.	None	163	243	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Hydrogen iodide, anhydrous	2.3	UN2197		2.3	3, B14, N89	None	304	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Hydrogen sulfide	2.3	UN1053		2.3, 2.1	2, B9, B14, N89	None	304	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*			
	Methyl acetylene and propadiene mixtures, stablized.	2.1	UN1060		2.1	N88, T50	306	304	314, 315	Forbidden	150 kg	B	40
	*		*		*	*		*	*	*			
	Menthyl bromide	2.3	UN1062		2.3	3, B14, N86, T50.	None	193	314, 315	Forbidden	Forbidden		40

*	*		*	*	*	*	*						
Methyl chloride *or* Refrigerant gas R 40.	2.1	UN1063	D	2.1	N86, T50	306	304	314, 315	5 kg	100 kg			40
*	*		*	*	*	*	*						
Methyl chloride and methylene chloride mixtures.	2.1	UN1912		2.1	N86, T50	306	304	314, 315	Forbidden	150 kg			40
*	*		*	*	*	*	*						
Methyl mercaptan	2.3	UN1064		2.3, 2.1	3, B7, B9, B14, N89, T50.	None	304	314, 315	Forbidden	Forbidden			40
*	*		*	*	*	*	*						
Methylamine, anhydrous	2.1	UN1061		2.1	N87, T50	306	304	314, 315	Forbidden	150 kg		B	40
*	*		*	*	*	*	*						
Oxygen difluoride, compressed	2.3	UN2190		2.3, 5.1, 8.	1, N86	None	304	None	Forbidden	Forbidden		D	13, 40, 89, 90
*	*		*	*	*	*	*						
Phosphine	2.3	UN2199		2.3, 2.1	N89	None	192	245	Forbidden	Forbidden		D	40
*	*		*	*	*	*	*						
Silane	2.1	UN2203		2.1	N89	None	302	None	Forbidden	Forbidden		E	40, 57, 104
*	*		*	*	*	*	*						
Trimethylamine, anhydrous	2.1	UN1083		2.1	N87, T50	306	304	314, 315	Forbidden	150 kg		B	40
*	*		*	*	*	*	*						
Tungsten hexafluoride	2.3	UN2196		2.3, 8	2, N86	None	338	None	Forbidden	Forbidden		D	40
*	*		*	*	*	*	*						
Vinyl bromide, stabilized	2.1	UN1085		2.1	N86, T50	306	304	314, 315	Forbidden	150 kg		B	40
*	*		*	*	*	*	*						
Vinyl chloride, stabilized	2.1	UN1086		2.1	21, B44, N86, T50.	306	304	314, 315	Forbidden	150 kg		B	40
Vinyl fluoride, stabilized	2.1	UN1086		2.1	N86	306	304	314, 315	Forbidden	150 kg		E	40
*	*		*	*	*	*	*						

13. In § 172.102(c)(5), Special Provisions ''N86'', ''N87'', ''N88'' and ''N89'' are added to read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(5) * * *

Code/Special Provisions

N86 UN pressure receptacles made of aluminum alloy are not authorized.

N87 The use of copper valves on UN pressure receptacles is prohibited.

N88 Metal parts of UN pressure receptacles in contact with the contents must contain no more than 65% copper.

N89 When steel UN pressure receptacles are used, only those bearing the ''H'' mark are authorized.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

15. In § 173.40, paragraphs (a)(1), (a)(2), and (b) are revised and paragraph (a)(3) is added to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

(a) * * *

(1) A cylinder must conform to a DOT specification or a UN standard prescribed in subpart C of part 178 of this subchapter, except that acetylene cylinders, and non-refillable cylinders are not authorized. A Hazard Zone A material is prohibited for transport in UN tubes or MEGCs.

(2) The use of a Specification 3AL cylinder made of aluminum alloy 6351-T6 is prohibited for a Division 2.3 Hazard Zone A material or a Division 6.1 Hazard Zone A material.

(3) A UN composite cylinder certified to ISO-11119-3 is not authorized for a Division 2.3 Hazard Zone A or B material.

* * * * *

(b) *Outage and pressure requirements.* The pressure at 55 °C (131 °F) of Hazard Zone A and Hazard Zone B materials may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F). For UN seamless cylinders used for Hazard Zone A or Hazard Zone B materials, the maximum water capacity is 85 L. Each UN cylinder must have a test pressure of 200 bar or greater, and a minimum wall thickness of 3.5 mm if made of aluminum alloy or 2 mm if made of steel. Alternatively, the UN cylinder may be packed in an outer packaging that meets the Packing Group I performance level when tested as prepared for transport, and that is designed and constructed to protect the cylinder and valve from puncture or damage that may result in release of the gas.

* * * * *

16. Section 173.163 is revised to read as follows:

§ 173.163 Hydrogen fluoride.

(a) Hydrogen fluoride (hydrofluoric acid, anhydrous) must be packaged as follows:

(1) In specification 3, 3A, 3AA, 3B, 3BN, or 3E cylinders; or in specification 4B, 4BA, or 4BW cylinders except that brazed 4B, 4BA, and 4BW cylinders are not authorized. The filling density may not exceed 85 percent of the cylinder's water weight capacity. In place of the periodic volumetric expansion test, cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such requalification becomes due.

(2) In a UN cylinder, as specified in part 178 of this subchapter, having a minimum test pressure of 10 bar and a maximum filling ratio of 0.84.

(b) A cylinder removed from hydrogen fluoride service must be condemned in accordance with § 180.205 of this subchapter. Alternatively, at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure.

17. In § 173.192, the introductory text and paragraph (a) introductory text are revised to read as follows:

§ 173.192 Packaging for certain toxic gases in Hazard Zone A.

When § 172.101 of this subchapter specifies a toxic material must be packaged under this section, only the following cylinders are authorized:

(a) Specification 3A1800, 3AA1800, 3AL1800, 3E1800, or seamless UN cylinders with a marked test pressure of 200 bar or greater.

* * * * *

18. In § 173.195, at the end of paragraph (a)(1), the wording '',or'' is removed and a period added in its place and paragraph (a)(3) is added to read as follows:

§ 173.195 Hydrogen cyanide, anhydrous, stabilized (hydrocyanic acid, aqueous solution).

(a) * * *

(3) UN cylinders, as specified in part 178, with a minimum test pressure of 100 bar and a maximum filling ratio of 0.55. The use of UN tubes and MEGCs is not authorized.

* * * * *

19. In § 173.201, the last entry in paragraph (c) is revised to read as follows:

§ 173.201 Non-bulk packagings for liquid hazardous materials in Packing Group I.

(c) * * *

Cylinders, specification or UN standard, as prescribed for any compressed gas, except 3HT and those prescribed for acetylene.

20. Section 173.205 is revised to read as follows:

§ 173.205 Specification cylinders for liquid hazardous materials.

When § 172.101 of this subchapter specifies that a hazardous material must be packaged under this section, the use of any specification or UN cylinder, except those specified for acetylene, is authorized. Cylinders used for toxic materials in Division 6.1 or 2.3 must conform to the requirements of § 173.40.

21. In § 173.226, paragraph (a) is revised to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

* * * * *

(a) In seamless specification or UN cylinders conforming to the requirements of § 173.40.

22. In § 173.227, paragraph (a) is revised to read as follows:

§ 173.227 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone B.

* * * * *

(a) In packagings as authorized in § 173.226 and seamless and welded specification cylinders or UN seamless cylinders conforming to the requirements of § 173.40.

23. In § 173.228, the introductory text is removed and paragraph (a) is revised to read as follows:

§ 173.228 Bromine pentafluoride or bromine trifluoride.

(a) Bromine pentafluoride and bromine trifluoride are authorized in packagings as follows:

(1) Specification 3A150, 3AA150, 3B240, 3BN150, 4B240, 4BA240, 4BW240, and 3E1800 cylinders.

(2) UN cylinders as specified in Part 178 of this subchapter, except acetylene cylinders and non-refillable cylinders, with a minimum test pressure of 10 bar and a minimum outage of 8 percent by volume. The use of UN tubes and MEGCs is not authorized.

(3) The use of a pressure relief device is not authorized.

* * * * *

24. In § 173.301, the section heading, the first sentence in paragraph (a)(1), the introductory text to paragraphs (a), (a)(1), (h), (h)(1), (i) and (l), and paragraphs (c), (d), (j), and (k) are revised and a new paragraph (a)(10) is added to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

(a) *General qualifications for use of cylinders.* Unless otherwise stated, as used in this section, the term ''cylinder'' includes a UN pressure receptacle. As used in this subpart, *filled* or *charged* means an introduction or presence of a hazardous material in a cylinder. A cylinder filled with a Class 2 hazardous material (gas) and offered for transportation must meet the requirements in this section and §§ 173.301a through 173.305, as applicable.

(1) Compressed gases must be in UN pressure receptacles built in accordance with the UN standards or in metal cylinders and containers built in accordance with the DOT and ICC specifications and Part 178 of this subchapter in effect at the time of manufacture, and requalified and marked as prescribed in subpart C in part 180 of this subchapter, if applicable. The DOT and ICC specifications authorized for use are as follows:

* * * * *

(10) A composite cylinder certified to ISO–11119–3 is subject to the following conditions:

(i) The cylinder must have a working pressure not to exceed 62 bar when used for Division 2.1 materials;

(ii) The cylinders may not be used for underwater breathing applications.

* * * * *

(c) *Toxic gases and mixtures.* Cylinders containing toxic gases and toxic gas mixtures meeting the criteria of Division 2.3 Hazard Zone A or B must conform to the requirements of § 173.40 and CGA Pamphlets S–1.1 and S–7 (IBR; see § 171.7 of this subchapter). A DOT 39 cylinder, UN non-refillable cylinder or UN composite cylinder certified to ISO–11119–3 may not be used for a toxic gas or toxic gas mixture meeting the criteria for Division 2.3, Hazard Zone A or B.

(d) *Gases capable of combining chemically.* A cylinder may not contain any gas or material capable of combining chemically with the cylinder's contents or with the cylinder's material construction, so as to endanger the cylinder's serviceability. DOT 3AL cylinders made of aluminum alloy 6351–T6 may not be filled and offered for transportation with pyrophoric gases. The use of UN cylinders made of aluminum alloy 6351–T6 is prohibited.

* * * * *

(h) *Cylinder valve protection.* UN pressure receptacles must meet the valve protection requirements in § 173.301b(f). A DOT specification cylinder used to transport a hazardous material must meet the requirements specified in this paragraph (h).

(1) The following specification cylinders are not subject to the cylinder valve protection requirements in this paragraph (h):

* * * * *

(i) *Cylinders mounted on motor vehicles or in frames.* MEGCs must conform to the requirements in § 173.312. DOT specification cylinders mounted on motor vehicles or in frames must conform to the requirements specified in this paragraph (i). Seamless DOT specification cylinders longer than 2 m (6.5 feet) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity. Cylinders may not be transported by rail in container on freight car (COFC) or trailer on flat car (TOFC) service except under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration. The cylinder must be configured as follows:

* * * * *

(j) *Non-specification cylinders in domestic use.* Except as provided in paragraph (k) and (l) of this section, a filled cylinder manufactured to other than a UN standard in accordance with Part 178 of this subchapter or DOT specification, other than a DOT exemption cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309(a), may not be transported to, from, or within the United States.

(k) *Importation of foreign cylinders for discharge within a single port area.* A cylinder manufactured to other than a DOT specification or UN standard and certified as being in conformance with the transportation regulations of another country may be authorized, upon written request to and approval by the Associate Administrator, for transportation within a single port area, provided—

(1) The cylinder is transported in a closed freight container;

(2) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the regulations in this subchapter for a comparable DOT specification or UN cylinder; and

(3) The cylinder is not refilled for export unless in compliance with paragraph (l) of this section.

(l) *Filling of foreign cylinders for export.* A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a UN standard, DOT specification or exemption, may be filled with a gas in the United States and offered for transportation and transported for export, if the following conditions are met:

* * * * *

25. Section 173.301b is added to read as follows:

173.301b Additional general requirements for shipment of UN pressure receptacles.

(a) *General.* The requirements of this section are in addition to the requirements in § 173.301 and apply to the shipment of gases in UN pressure receptacles. A UN pressure receptacle, including closures, must conform to the design, construction, inspection and testing requirements specified in Parts 178 and 180 of this subchapter, as applicable. Bundles of cylinders must conform to the requirements in § 178.70(e) of this subchapter.

(b) *Compatibility of lading with packaging.* The gases or gas mixtures must be compatible with the UN pressure receptacle and valve materials as prescribed for metallic materials in ISO 11114–1 and for non-metallic materials in ISO 11114–2 (IBR, see § 171.7 of this subchapter).

(c) *Change of service.* A refillable UN pressure receptacle may not be filled with a gas or gas mixture different from that previously contained in the UN pressure receptacle unless the necessary operations for change of gas service have been performed in accordance with ISO 11621 (IBR, see § 171.7 of this subchapter).

(d) *Individual shut-off valves and pressure relief devices.* Except for Division 2.2 permanent gases, each UN pressure receptacle must be equipped with an individual shutoff valve that must be tightly closed while in transit. Each UN pressure receptacle must be individually equipped with a pressure relief device as prescribed by § 173.301(f), except that pressure relief devices on bundles of cylinders or manifolded horizontal cylinders must have a set-to-discharge pressure that is based on the lowest marked pressure of any cylinder in the bundle or manifolded unit.

(e) *Outer packaging.* When a strong outer packaging is prescribed, for example as provided by paragraph (a)(6) or (g)(1) of this section, the UN pressure receptacles must be protected to prevent movement. Unless otherwise specified in this part, more than one UN pressure receptacle may be enclosed in the strong outer packaging.

(f) *Cylinder valve protection.* A UN pressure receptacle must have its valves protected from damage that could cause inadvertent release of the contents of the UN pressure receptacle by one of the following methods:

(1) By constructing the pressure receptacle so that the valves are recessed inside the neck of the UN pressure receptacle and protected by a threaded plug or cap;

(2) By equipping the UN pressure receptacle with a valve cap conforming to the requirements in ISO 11117 (IBR, see § 171.7 of this subchapter). The cap must have vent-holes of sufficient cross-sectional area to evacuate the gas if leakage occurs at the valve;

(3) By protecting the valves by shrouds or guards conforming to the requirements in ISO 11117;

(4) By using valves designed and constructed to withstand damage without leakage of hazardous material. The valves must conform to the requirements in Annex B of ISO 10297 (IBR, see § 171.7 of this subchapter);

(5) By enclosing the UN pressure receptacles in frames, *e.g.,* bundles of cylinders; or

(6) By packing the UN pressure receptacles in a strong outer package, such as a box or crate, capable of meeting the drop test specified in § 178.603 of this subchapter at the Packing Group I performance level.

(g) *Non-refillable UN pressure receptacles.* Non-refillable UN pressure receptacles must conform to the following requirements:

(1) The receptacles must be transported as an inner package of a combination package;

(2) The receptacle must have a water capacity not exceeding 1.25 L when used for a flammable or toxic gas; and

(3) The receptacle is prohibited for Hazard Zone A material.

(h) *Damage to pressure receptacle.* A UN pressure receptacle may not be filled and offered for transportation when damaged to such an extent that the integrity of the UN pressure receptacle or its service equipment may be affected. Prior to filling, the service equipment must be examined and found to be in good working condition (see § 178.70(d) of this subchapter). In addition, the required markings must be legible on the pressure receptacle.

(i) *Pyrophoric gases.* A UN pressure receptacle must have valves equipped with gas-tight plugs or caps when used for pyrophoric or flammable mixtures of gases containing more than 1% pyrophoric compounds.

(j) *Hydrogen bearing gases.* Hydrogen bearing gases or other embrittling gases that have the potential of causing hydrogen embrittlement must be packaged in a steel UN pressure receptacle bearing an ''H'' mark.

26. In § 173.302, the introductory text to paragraph (a) and paragraph (b)(3) are revised to read as follows:

§ 173.302 Filling of cylinders with non-liquefied (permanent) compressed gases.

(a) *General requirements.* A cylinder filled with a non-liquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and § 173.301. In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302a and 173.305, as applicable. UN pressure receptacles must meet the requirements in §§ 173.301b and 173.302b, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

* * * * *

(b) * * *

(3) Each UN pressure receptacle must be cleaned in accordance with the requirements of ISO 11621 (IBR, see § 171.7 or this subchapter). Each DOT cylinder must be cleaned in accordance with the requirements of GSA Federal Specification RR–C–901D, paragraphs 3.3.1 and 3.3.2 (IBR, see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in Federal Specification RR–C–901D may be used provided they do not react with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Federal Specification RR–C–901D, paragraph 4.4.2.2, and meet the specified standard of cleanliness.

* * * * *

27. Section 173.302b is added to read as follows:

173.302b Additional requirements for shipment of non-liquefied (permanent) compressed gases in UN pressure receptacles.

(a) *General.* A cylinder filled with a non-liquefied gas must be offered for transportation in UN pressure receptacles subject to the requirements in this section and § 173.302. In addition, the requirements in §§ 173.301 and 173.301b must be met.

(b) *UN pressure receptacles filling limits.* A UN pressure receptacle is authorized for the transportation of non-liquefied compressed gases as specified in this section. Except where filling limits are specifically prescribed in this section, the working pressure of a UN pressure receptacle may not exceed ⅔ of the test pressure of the receptacle. Alternatively, the filling limits specified for non-liquefied gases in Table 1 of P200 of the UN Model Regulations (IBR, see § 171.7 or this subchapter) are authorized. In no case may the internal pressure at 65 °C (149 °F) exceed the test pressure.

(c) *Fluorine, compressed, UN 1045 and Oxygen diflouride, compressed, UN 2190.* Fluorine, compressed and Oxygen difluoride, compressed must be packaged in a UN pressure receptacle with a minimum test pressure of 200 bar and a maximum working pressure not to exceed 30 bar. A UN pressure receptacle made of aluminum alloy is not authorized. The maximum quantity of gas authorized in each UN pressure receptacle is 5 kg.

(d) *Diborane and diborane mixtures, UN 1911.* Diborane and diborane mixtures must be packaged in a UN pressure receptacle with a minimum test pressure of 250 bar and a maximum filling ratio dependent on the test pressure not to exceed 0.07. Filling should be further limited so that if complete decomposition of diborane occurs, the pressure of diborane or diborane mixtures will not exceed the working pressure of the cylinder. The use of UN tubes and MEGCs is not authorized.

(e) *Carbon monoxide, compressed UN 1016.* Carbon monoxide, compressed is authorized in UN pressure receptacles. The settled pressure in a steel pressure receptacle containing carbon monoxide may not exceed ⅓ of the pressure receptacle's test pressure at 65 °C (149 °F) except, if the gas is dry and sulfur-free, the settled pressure may not exceed ½ of the marked test pressure.

28. In § 173.303, paragraph (b) is revised and (f) is added to read as follows:

§ 173.303 Filling of cylinders with compressed gas in solution (acetylene).

* * * * *

(b) *Filling limits.* For DOT specification cylinders, the pressure in the cylinder containing acetylene gas may not exceed 250 psig at 70 °F. If cylinders are marked for a lower allowable charging pressure at 70 °F., that pressure must not be exceeded. For UN cylinders, the pressure in the cylinder may not exceed the limits specified in § 173.304b(b)(2).

(f) *UN cylinders.* (1) UN cylinders and bundles of cylinders are authorized for the transport of acetylene gas as specified in this section. Each UN acetylene cylinder must conform to ISO 3807–2 (IBR, see § 171.7 of this subchapter), have a homogeneous monolithic porous mass filler and be charged with acetone or a suitable solvent as specified in the standard. UN acetylene cylinders may be filled up to the pressure limits specified in ISO 3807–2 and must have a minimum test pressure of 52 bar. Any metal part in contact with the contents may not contain more than 65% copper in the alloy. The use of UN tubes and MEGCs is not authorized.

(2) UN cylinders equipped with pressure relief devices or that are manifolded together must be transported upright.

29. In § 173.304, the introductory text in paragraph (a) is revised to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

(a) *General requirements.* A cylinder filled with a liquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and the general requirements in § 173.301. In addition, a DOT specification cylinder must meet the requirement in §§ 173.301a, 173.304a, and 173.305, as applicable. UN pressure receptacles must be shipped in accordance with the requirements in 173.301b and 173.304b, as applicable.

* * * * *

30. Section 173.304b is added to read as follows:

§ 173.304b Additional requirements for shipment of liquefied compressed gases in UN pressure receptacles.

(a) General. Liquefied gases must be offered for transportation in UN pressure receptacles subject to the requirements in this section and § 173.304. In addition, the general requirements applicable to UN pressure receptacles in §§ 173.301 and 173.301b must be met.

(b) *UN pressure receptacle filling limits.* A UN pressure receptacle is authorized for the transportation of liquefied compressed gases as specified in this section. When a liquefied compressed gas is transported in a UN pressure receptacle, the filling ratio may not exceed the maximum filling ratio (FR) prescribed in this section and the applicable ISO standard. Compliance with the filling limits may be determined by computing the filling limit in accordance with this section or by referencing the numerical values and data in Table 2 of P200 of the UN Model Regulations. The maximum allowable filling limits authorized for liquefied compressed gases in UN pressure receptacles are:

(1) For high pressure liquefied gases, in no case may the filling ratio of the settled pressure at 65 °C (149 °F) exceed the test pressure of the UN pressure receptacle.

(2) For low pressure liquefied gases, the filling factor (maximum mass of contents per liter of water capacity) must be less than or equal to 95 percent of the liquid phase at 50 °C. In addition, the UN pressure receptacle may not be liquid full at 60 °C. The test pressure of the pressure receptacle must equal to or greater than the vapor pressure of the liquid at 65 °C.

(3) For high pressure liquefied gas mixtures, maximum filling ratio may be determined as follows:

$$FR = 8.5\times10^{-4} \times d_g \times P_h$$

Where:

FR = maximum filling ratio
d_g = gas density (at 15 °C, 1 bar)(g/l)
P_h = minimum test pressure (bar)

If the density of the gas is unknown, the maximum filling ratio must be determined as follows:

$$FR = \frac{P_h \times MM \times 10^{-3}}{R \times 338}$$

Where:

FR = maximum filling ratio
P_h = minimum test pressure (bar)
MM = molecular mass (g/mol)
$R = 8.31451 \times 10^{-2}$ (bar.l/mol.K) gas constant

(4) For low pressure liquefied gases, the maximum filling ratio must be determined as follows:

$$FR = (0.0032 \times BP - 0.24) \times d_l$$

Where:

FR = maximum filling ratio
BP = boiling point (°K)
d_l = density of the liquid at boiling point (kg/l)

(c) *Tetraflouroethylene, stabilized, UN 1081* must be packaged in a pressure receptacle with a minimum test pressure of 200 bar and a working pressure not exceeding 5 bar.

(d) *Fertilizer ammoniating solution with free ammonia, UN1043* is not authorized in UN tubes or MEGCs.

31. Section 173.312 is added to read as follows:

§ 173.312 Requirements for shipment of MEGCs.

(a) *General requirements.* (1) Unless otherwise specified, a MEGC is authorized for the shipment of liquefied and non-liquefied compressed gases. Each pressure receptacle contained in a MEGC must meet the requirements in §§ 173.301, 173.301b, 173.302b and 173.304b, as applicable.

(2) The MEGC must conform to the design, construction, inspection and testing requirements prescribed in § 178.75 of this subchapter.

(3) No person may offer or accept a hazardous material for transportation in a MEGC that is damaged to such an extent that the integrity of the pressure receptacles or its structural or service equipment may be affected.

(4) No person may fill or offer for transportation a pressure receptacle in a MEGC if the pressure receptacle or the MEGC is due for periodic requalification, as prescribed in subpart C to Part 180 of this subchapter. However, this restriction does not preclude those pressure receptacles filled and offered for transportation prior to the requalification due date.

(5) Prior to filling and offering a MEGC for transportation, a person must visually inspect the MEGC's structural and service equipment. Any unsafe condition must be corrected before the MEGC is offered for transportation. All required markings must be legible.

(6) Except for Division 2.2 permanent gases, each pressure receptacle must be equipped with an individual shutoff valve that must be tightly closed while in transit. For Division 2.2 gases (permanent or liquefied) and 2.3 liquefied gases, the manifold must be designed so that each pressure receptacle can be filled separately and be kept isolated by a valve capable of being closed during transit. For Division 2.1 gases, the pressure receptacles must be isolated by a valve into assemblies of not more than 3,000 L.

(b) *Filling.* (1) A MEGC may not be filled to a pressure greater than the lowest marked working pressure of any pressure receptacle. A MEGC may not be filled above its marked maximum permissible gross mass.

(2) After each filling, the shipper must verify the leakproofness of the closures and equipment. Each fill opening must be closed by a cap or plug.

(c) *Damage protection.* During transportation, a MEGC must be protected against damage to the pressure receptacles and service equipment resulting from lateral and longitudinal impact and overturning as prescribed in § 178.75 of this subchapter.

32. In § 173.323, the first sentence in paragraph (b)(2) is revised to read as follows:

§ 173.323 Ethylene oxide.

* * * * *

(b) * * *

(2) In specification cylinders or UN pressure receptacles, as authorized for any compressed gas except acetylene. * * *

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33. In § 173.334, the introductory text to paragraph (a) is revised to read as follows:

§ 173.334 Organic phosphates mixed with compressed gas.

(a) Hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate, tetraethyl pyrophosphate, or other Division 6.1 organic phosphates (including a compound or mixture), may be mixed with a non-flammable compressed gas. This mixture may not contain more than 20 percent by weight of an organic phosphate and must be packaged in DOT 3A240, 3AA240, 3B240, 4A240, 4B240, 4BA240, 4BW240 or UN cylinders meeting all of the following requirements:

* * * * *

34. Section 173.336 is revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

(a) Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification or UN cylinders as prescribed in § 173.192, except valves are not authorized. UN tubes and MEGCs are not authorized for use. Each valve opening must be closed by a solid metal plug with tapered thread properly luted to prevent leakage.

(b) Transportation in DOT 3AL cylinders is authorized only by highway and rail. Each cylinder must be cleaned according to the requirements of GSA Federal Specification RR–C–901D, paragraphs 3.3.1 and 3.3.2 (IBR, see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in RR–C–901D may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Specification RR–C–901D, paragraph 4.4.2.2 (IBR, see § 171.7 of this subchapter) and meet the standard of cleanliness specified therein.

35. In § 173.337, in paragraph (b) the wording ''RR–C–901C'' is revised to read ''RR–C–901D'' each place it appears, and the introductory paragraph is revised to read as follows:

§ 173.337 Nitric oxide.

(a) Nitric oxide must be packaged in cylinders conforming to the requirements of § 173.40 and as follows:

(1) *DOT specification cylinder.* In a DOT 3A1800, 3AA1800, 3E1800, or 3AL1800 cylinder. A DOT specification cylinder must be charged to a pressure of not more than 5,170 kPa (750 psi) at 21 °C (70 °F).

(2) *UN pressure receptacle.* In a UN pressure cylinder with a minimum test pressure of 200 bar and a maximum working pressure not exceeding 50 bar. A UN cylinder must be charged to a pressure of not more than 60 percent of the test pressure at 21 °C (70 °F) and the pressure in the cylinder at 65 °C (149 °F) may not exceed the test pressure. The use of UN tubes and MEGCs is not authorized.

(3) *Valves.* Cylinders must be equipped with a stainless steel valve and valve seat that will not deteriorate in contact with nitric oxide. Cylinders or valves may not be equipped with pressure relief devices of any type. In addition—

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PART 178—SPECIFICATIONS FOR PACKAGINGS

The authority citation for part 178 continues to read as follows:

36. **Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

37. Section 178.69 is added to read as follows:

§ 178.69 Responsibilities and requirements for manufacturers of UN pressure receptacles.

(a) Each manufacturer of a UN pressure receptacle made in the United States must comply with the requirements in this section. The manufacturer must maintain a quality system, obtain an approval for each initial pressure receptacle design type, and ensure that all production of UN pressure receptacles meets the applicable requirements.

(1) *Quality system.* The manufacturer of a UN pressure receptacle must have its quality system approved by the Associate Administrator. The quality system will initially be assessed through an audit by the Associate Administrator or his or her representative to determine whether it meets the requirements of this section. The Associate Administrator will notify the manufacturer in writing of the results of the audit. The notification will contain the conclusions of the audit and any corrective action required. The Associate Administrator may perform periodic audits to ensure that the manufacturer operates in accordance with the quality system. Reports of periodic audits will be provided to the manufacturer. The manufacturer must bear the cost of audits.

(2) *Quality system documentation.* The manufacturer must be able to demonstrate a documented quality system. Management must review the adequacy of the quality system to assure that it is effective and conforms to the requirements in § 178.70. The quality system records must be in English and must include detailed descriptions of the following:

(i) The organizational structure and responsibilities of personnel with regard to design and product quality;

(ii) The design control and design verification techniques, processes, and procedures used when designing the pressure receptacles;

(iii) The relevant procedures for pressure receptacle manufacturing, quality control, quality assurance, and process operation instructions;

(iv) Inspection and testing methodologies, measuring and testing equipment, and calibration data;

(v) The process for meeting customer requirements;

(vi) The process for document control and document revision;

(vii) The system for controlling non-conforming material and records, including procedures for identification, segregation, and disposition;

(viii) Production, processing and fabrication, including purchased components, in-process and final materials; and

(ix) Training programs for relevant personnel.

(3) *Maintenance of quality system.* The manufacturer must maintain the quality system as approved by the Associate Administrator. Any changes to the quality system after approval must be approved by the Associate Administrator.

(b) *Design type approvals.* The manufacturer must have each pressure receptacle design type reviewed by an IIA and approved by the Associate Administrator in accordance with § 178.70. A cylinder is considered to be of a new design, compared with an existing approved design, as stated in the applicable ISO design, construction and testing standard.

(c) *Production inspection and certification.* The manufacturer must ensure that each UN pressure receptacle is inspected and certified in accordance with § 178.71.

38. Section 178.70 is added to read as follows:

§ 178.70 Approval of UN pressure receptacles.

(a) *Initial design-type approval.* The manufacturer of a UN pressure receptacle must obtain an initial design type approval from the Associate Administrator. The initial design type approval must be of the pressure receptacle design as it is intended to be produced. The manufacturer must arrange for an IIA, approved by the Associate Administrator in accordance with subpart I of Part 107 of this chapter, to perform a pre-audit of its pressure receptacle manufacturing operation prior to having an audit conducted by the Associate Administrator or his designee.

(b) *IIA pre-audit.* The manufacturer must submit an application for initial design type approval to the IIA for review. The IIA will examine the manufacturer's application for initial design type approval for completeness. An incomplete application will be returned to the manufacturer with an explanation. If an application is complete, the IIA will review all technical documentation, including drawings and calculations, to verify that the design meets all requirements of the applicable UN pressure receptacle standard and specification requirements. If the technical documentation shows that the pressure receptacle prototype design conforms to the applicable standards and requirements in § 178.70, the manufacturer will fabricate a prototype lot of pressure receptacles in conformance with the technical documentation representative of the design. The IIA will verify that the prototype lot conforms to the applicable requirements by selecting pressure receptacles and witness their testing. After prototype testing has been satisfactorily completed, showing the pressure receptacles fully conform to all applicable specification requirements, the certifying IIA must prepare a letter of recommendation and a design type approval certificate. The design type approval certificate must contain the name and address of the manufacturer and the IIA certifying the design type, the test results, chemical analyses, lot identification, and all other supporting data specified in the applicable ISO design, construction and testing standard. The IIA must provide the certificate and documentation to the manufacturer.

(c) *Application for initial design type approval.* If the pre-audit is found satisfactory by the IIA, the manufacturer will submit the letter of recommendation from the IIA and an application for design type approval to the Associate Administrator. An application for initial design type approval must be submitted for each manufacturing facility. The application must be in English and, at a minimum, contain the following information:

(1) The name and address of the manufacturing facility. If the application is submitted by an authorized representative on behalf of the manufacturer, the application must include the representative's name and address.

(2) The name and title of the individual responsible for the manufacturer's quality system, as required by § 178.69.

(3) The designation of the pressure receptacle and the relevant pressure receptacle standard.

(4) Details of any refusal of approval of a similar application by a designated approval agency of another country.

(5) The name and address of the production IIA that will perform the functions prescribed in paragraph (e) of this section. The IIA must be approved in writing by the Associate Administrator in accordance with subpart I of part 107 of this chapter.

(6) Documentation on the manufacturing facility as specified in § 178.69.

(7) Design specifications and manufacturing drawings, showing components and subassemblies if relevant, design calculations, and material specifications necessary to verify compliance with the applicable pressure receptacle design standard.

(8) Manufacturing procedures and any applicable standards that describe in detail the manufacturing processes and control.

(9) Design type approval test reports detailing the results of examinations and tests conducted in accordance with the relevant pressure receptacle standard.

(d) *Modification of approved pressure receptacles.* Modification of an approved UN pressure receptacle is not authorized without the approval of the Associate Administrator. An audit may be required as part of the process to modify an approval.

(e) *Responsibilities of the production IIA.* The production IIA is responsible for ensuring that each pressure receptacle conforms to the design type approval. The production IIA must perform the following functions:

(1) Witness all examinations and tests specified in the UN pressure receptacle standard to ensure compliance with the standard and that the procedures adopted by the manufacturer meet the requirements of the standard;

(2) Verify that the production inspections were performed in accordance with this section;

(3) Select UN pressure receptacles from a prototype production lot and witness testing as required for the design type approval;

(4) Ensure that the various type approval examinations and tests are performed accurately;

(5) Verify that each pressure receptacle is marked in accordance with the applicable requirements in § 178.72; and

(6) Furnish complete test reports to the manufacturer and upon request to the purchaser. The test reports and certificate of compliance must be retained by the IIA for at least 20 years from the original test date of the pressure receptacles.

(f) *Production inspection audit and certification.* (1) If the application, design drawing and quality control documents are found satisfactory, PHMSA will schedule an on-site audit of the pressure receptacle manufacturer's quality system, manufacturing processes, inspections, and test procedures.

(2) During the audit, the manufacturer will be required to produce pressure receptacles to the technical standards for which approval is sought.

(3) The production IIA must perform the required inspections and testing on the pressure receptacles during the production run. The IIA selected by the manufacturer for production inspection and testing may be different from the IIA who performed the design type approval testing.

(4) If the procedures and controls are deemed acceptable, test sample pressure receptacles will be selected at random from the production lot and sent to a laboratory designated by the Associate Administrator for verification testing.

(5) If the pressure receptacle test samples are found to conform to all the applicable requirements, the Associate Administrator will issue approvals to the manufacturer and the production IIA to authorize the manufacture of the pressure receptacles. The approved design type approval certificate will be returned to the manufacturer.

(6) Upon the receipt of the approved design type approval certificate from the Associate Administrator, the pressure receptacle manufacturer must sign the certificate.

(g) *Recordkeeping.* The production IIA and the manufacturer must retain a copy of the design type approval certificate and certificate of compliance records for at least 20 years.

(h) *Denial of design type application.* If the design type application is denied,

the Associate Administrator will notify the applicant in writing and provide the reason for the denial. The manufacturer may request that the Associate Administrator reconsider the decision. The application request must—

(1) Be written in English and filed within 60 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law; and

(3) Enclose any additional information needed to support the request to reconsider.

(i) *Appeal.* (1) A manufacturer whose reconsideration request is denied may appeal to the PHMSA Administrator. The appeal must—

(i) Be written in English and filed within 60 days of receipt of the Associate Administrator's decision on reconsideration;

(ii) State in detail any alleged errors of fact and law;

(iii) Enclose any additional information needed to support the appeal; and

(iv) State in detail the modification of the final decision sought.

(2) The PHMSA Administrator will grant or deny the relief and inform the appellant in writing of the decision. PHMSA Administrator's decision is the final administrative action.

(j) *Termination of a design type approval certificate.* (1) The Associate Administrator may terminate an approval certificate issue under this section if it is determined that, because of a change in circumstances, the approval no longer is needed or no longer would be granted if applied for; information upon which the approval was based is fraudulent or substantially erroneous; or termination of the approval is necessary to adequately protect against risks to life and property.

(2) Before an approval is terminated, the Associate Administrator will provide the manufacturer and the approval agency—

(i) Written notice of the facts or conduct believed to warrant the withdrawal;

(ii) Opportunity to submit oral and written evidence, and

(iii) Opportunity to demonstrate or achieve compliance with the application requirement.

(3) If the Associate Administrator determines that a certificate of approval must be withdrawn to preclude a significant and imminent adverse affect on public safety, the procedures in paragraph (j)(2) (ii) and (iii) of this section need not be provided prior to withdrawal of the approval, but shall be provided as soon as practicable thereafter.

39. Section 178.71 is added to read as follows:

§ 178.71. Specifications for UN pressure receptacles.

(a) *General.* Each UN pressure receptacle must meet the requirements of this section. Requirements for approval, qualification, maintenance, and testing are contained in § 178.70, and subpart C of part 180 of this subchapter.

(b) *Definitions.* The following definitions apply for the purposes of design and construction of UN pressure receptacles under this subpart:

Alternative arrangement means an approval granted by the Associate Administrator for a MEGC that has been designed, constructed or tested to the technical requirements or testing methods other than those specified for UN pressure receptacles in Part 178 or Part 180 of this subchapter.

Bundles of cylinders. See § 171.8 of this subchapter.

Design type means a pressure receptacle design as specified by a particular pressure receptacle standard.

UN pressure receptacle design type means a UN pressure receptacle made to the same technical standards, of materials of the same specifications and thicknesses, manufactured by a single manufacturer at the same facility, using the same fabrication techniques and made with equivalent structural equipment, closures and service equipment.

UN tube. See § 171.8 of this subchapter.

(c) *General design and construction.* (1) UN pressure receptacles and their closures must be designed, manufactured, tested and equipped in accordance with the requirements contained in this section.

(2) The standard requirements applicable to UN pressure receptacles may be varied only if approved in writing by the Associate Administrator.

(3) The test pressure of UN cylinders, tubes, and bundles of cylinders must conform to the requirements in Part 178 of this subchapter.

(d) *Service equipment.* (1) Except for pressure relief devices, UN pressure receptacle equipment, including valves, piping, fittings, and other equipment subjected to pressure must be designed and constructed to withstand at least 1.5 times the test pressure of the pressure receptacle.

(2) Service equipment must be configured or designed to prevent damage that could result in the release of the pressure receptacle contents during normal conditions of handling and transport. Manifold piping leading to shut-off valves must be sufficiently flexible to protect the valves and the piping from shearing or releasing the pressure receptacle contents. The filling and discharge valves and any protective caps must be secured against unintended opening. The valves must be protected as specified in § 173.301b(f) of this subchapter.

(3) UN pressure receptacles that cannot be handled manually or rolled, must be equipped with devices (*e.g.* skids, rings, straps) ensuring that they can be safely handled by mechanical means and so arranged as not to impair the strength of, nor cause undue stresses, in the pressure receptacle.

(4) Pressure receptacles filled by volume must be equipped with a level indicator.

(e) *Bundles of cylinders.* UN pressure receptacles assembled in bundles must be structurally supported and held together as a unit and secured in a manner that prevents movement in relation to the structural assembly and movement that would result in the concentration of harmful local stresses. The frame design must ensure stability under normal operating conditions.

(1) The frame must securely retain all the components of the bundle and must protect them from damage during conditions normally incident to transportation. The method of cylinder restraint must prevent any vertical or horizontal movement or rotation of the cylinder that could cause undue strain on the manifold. The total assembly must be able to withstand rough handling, including being dropped or overturned.

(2) The frame must include features designed for the handling and transportation of the bundle. The lifting rings must be designed to withstand a design load of 2 times the maximum gross weight. Bundles with more than one lifting ring must be designed such that a minimum sling angle of 45 degrees to the horizontal can be achieved during lifting using the lifting rings. If four lifting rings are used, their design must be strong enough to allow the bundle to be lifted by two rings. Where two or four lifting rings are used, diametrically opposite lifting rings must be aligned with each other to allow for correct lifting using shackle pins. If the bundle is filled with forklift pockets, it must contain two forklift pockets on each side from which it is to be lifted. The forklift pockets must be positioned symmetrically consistent with the bundle center of gravity.

(3) The frame structural members must be designed for a vertical load of 2 times the maximum gross weight of the bundle. Design stress levels may not

exceed 0.9 times the yield strength of the material.

(4) The frame may not contain any protrusions from the exterior frame structure that could cause a hazardous condition.

(5) The frame design must prevent collection of water or other debris that would increase the tare weight of bundles filled by weight.

(6) The floor of the bundle frame must not buckle during normal operating conditions and must allow for the drainage of water and debris from around the base of the cylinders.

(7) If the frame design includes movable doors or covers, they must be capable of being secured with latches or other means that will not become dislodged by operational impact loads. Valves that need to be operated in normal service or in an emergency must be accessible.

(g) *Design and construction requirements for UN refillable seamless steel cylinders.* In addition to the general requirements of this section, UN refillable seamless steel cylinders must conform to the following ISO standards, as applicable:

(1) ISO 9809–1; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa. (IBR, see § 171.7 of this subchapter).

(2) ISO 9809–2; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa. (IBR, see § 171.7 of this subchapter).

(3) ISO 9809–3; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders. (IBR, see § 171.7 of this subchapter).

(h) *Design and construction requirements for UN refillable seamless aluminum alloy cylinders.* In addition to the general requirements of this section, UN refillable seamless aluminum cylinders must conform to ISO 7866; Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing. (IBR, see § 171.7 of this subchapter). The use of Aluminum alloy 6351–T6 or equivalent is prohibited.

(i) *Design and construction requirements for UN non-refillable metal cylinders.* In addition to the general requirements of this section, UN non-refillable metal cylinders must conform to ISO 11118; Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods. (IBR, see § 171.7 of this subchapter).

(j) *Design and construction requirements for UN refillable seamless steel tubes.* In addition to the general requirements of this section, UN refillable seamless steel tubes must conform to ISO 11120; Gas cylinders—Refillable seamless steel tubes for compressed gas transport, of water capacity between 150 L and 3000 L—Design, construction and testing. (IBR, see § 171.7 of this subchapter).

(k) *Design and construction requirements for UN acetylene cylinders.* In addition to the general requirements of this section, UN acetylene cylinders must conform to the following ISO standards, as applicable:

(1) For the cylinder shell:

(i) ISO 9809–1; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa.

(ii) ISO 9809–3; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders.

(2) The porous mass in an acetylene cylinder must conform to ISO 3807–2; Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs. (IBR, see § 171.7 of this subchapter).

(l) *Design and construction requirements for UN composite cylinders.* In addition to the general requirements of this section, UN composite cylinders must be designed for unlimited service life and conform to the following ISO standards, as applicable:

(1) ISO 11119–1; Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders. (IBR, see § 171.7 of this subchapter).

(2) ISO 11119–2; Gas cylinders of composite construction—Specification and test methods—Part 2: Fully-wrapped fibre reinforced composite gas cylinders with load-sharing metal liners. (IBR, see § 171.7 of this subchapter).

(3) ISO 11119–3; Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-metallic and non-load sharing metallic liners. (IBR, see § 171.7 of this subchapter). The design and construction of composite cylinders without liners are prohibited.

(m) *Material compatibility.* In addition to the material requirements specified in the UN pressure receptacle design and construction ISO standards, and any restrictions specified in Part 173 for the gases to be transported, the requirements of the following standards must be applied with respect to material compatibility:

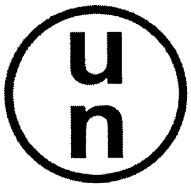
(1) ISO 11114–1; Transportable gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials. (IBR, see § 171.7 of this subchapter).

(2) ISO 11114–2; Transportable gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials. (IBR, see § 171.7 of this subchapter).

(n) *Protection of service equipment and closures.* Closures and their protection must conform to the requirements in § 173.301(f) of this subchapter.

(o) *Marking of UN refillable pressure receptacles.* UN refillable pressure receptacles must be marked clearly and legibly. The required markings must be permanently affixed by stamping, engraving, or other equivalent method, on the shoulder, top end or neck of the pressure receptacle or on a permanently affixed component of the pressure receptacle, such as a welded collar. Except for the ''UN'' mark, the minimum size of the marks must be 5 mm for pressure receptacles with a diameter greater than or equal to 140 mm and 2.5 mm for pressure receptacles with a diameter less than 140 mm. The minimum size of the ''UN'' mark must be 5 mm for pressure receptacles with a diameter less than 140 mm and 10 mm for pressure receptacles with a diameter of greater than or equal to 140 mm. The depth of the markings must not create harmful stress concentrations. A refillable pressure receptacle conforming to the UN standard must be marked as follows:

(1) The UN packaging symbol.



(2) The ISO standard, for example ISO 9809–1, used for design, construction and testing.

(3) The mark of the country where the approval is granted. The letters ''USA'' must be marked on UN pressure receptacles approved by the United States. The manufacturer must obtain an approval number from the Associate Administrator. The manufacturer approval number must follow the country of approval mark, separated by a slash (for example, USA/MXXXX). Pressure receptacles approved by more than one national authority may contain

the mark of each country of approval, separated by a comma.

(4) The identity mark or stamp of the IIA.

(5) The date of the initial inspection, the year (four digits) followed by the month (two digits) separated by a slash, for example ''2006/04''.

(6) The test pressure in bar, preceded by the letters ''PH'' and followed by the letters ''BAR''.

(7) The empty or tare weight. Except for acetylene cylinders, empty weight is the mass of the pressure receptacle in kilograms, including all integral parts (*e.g.*, collar, neck ring, foot ring, etc.), followed by the letters ''KG''. The empty weight does not include the mass of the valve, valve cap or valve guard or any coating. The empty weight must be expressed to three significant figures rounded up to the last digit. For cylinders of less than 1 kg, the empty weight must be expressed to two significant figures rounded down to the last digit. For acetylene cylinders, the tare weight must be marked on the cylinders in kilograms (KG). The tare weight is the sum of the empty weight, mass of the valve, any coating and all permanently attached parts (*e.g.* fittings and accessories) that are not removed during filling. The tare weight must be expressed to two significant figures rounded down to the last digit. The tare weight does not include the cylinder cap or any outlet cap or plug not permanently attached to the cylinder.

(8) The minimum wall thickness of the pressure receptacle in millimeters followed by the letters ''MM''. This mark is not required for pressure receptacles with a water capacity less than or equal to 1.0 L or for composite cylinders.

(9) For pressure receptacles intended for the transport of compressed gases and UN 1001 acetylene, dissolved, the working pressure in bar, preceded by the letters ''PW''.

(10) For liquefied gases, the water capacity in liters expressed to three significant digits rounded down to the last digit, followed by the letter ''L''. If the value of the minimum or nominal water capacity is an integer, the digits after the decimal point may be omitted.

(11) Identification of the cylinder thread type (*e.g.*, 25E).

(12) The country of manufacture. The letters ''USA'' must be marked on cylinders manufactured in the United States.

(13) The serial number assigned by the manufacturer.

(14) For steel pressure receptacles intended for the transport of gases with a risk of hydrogen embrittlement, the letter ''H'' showing compatibility of the steel, as specified in 1SO 11114–1.

(15) Identification of aluminum alloy, if applicable.

(16) Stamp for Nondestructive testing, if applicable.

(p) *Marking sequence.* The marking required by paragraph (o) must be placed in three groups as shown in the example below:

(i) The top grouping contains manufacturing marks and must appear consecutively in the sequence given in paragraphs (o)(11) through (16) of this section.

(ii) The middle grouping contains operational marks described in paragraphs (o)(11) through (15) of this section.

(iii) The bottom grouping contains certification marks and must appear consecutively in the sequence given in paragraph (o)(1) through (5) of this section.

(11)	(12)	(13)	(14)	(15)	(16)
25E	USA	765432	H		

(9)	(6)	(7)	(10)	(8)
PW200	PH300BAR	62.1KG	50L	5.8MM

(1)	(2)	(3)	(4)	(5)
un	ISO 9809-1	USA/MXXXX	IB	2005/12

(q) *Other markings.* Other markings are allowed in areas other than the side wall, provided they are made in low stress areas and are not of a size and depth that will create harmful stress concentrations. Such marks must not conflict with required marks.

(r) *Marking of UN non-refillable pressure receptacles.* Unless otherwise specified in this paragraph, each UN non-refillable pressure receptacles must be clearly and legibly marked as prescribed in paragraph (o) of this section. In addition, permanent stenciling is authorized. Except when stenciled, the marks must be on the shoulder, top end or neck of the pressure receptacle or on a permanently affixed component of the pressure receptacle, for example a welded collar.

(1) The marking requirements and sequence listed in paragraphs (o)(1) through (16) of this section are required, except the markings in paragraphs (o)(7), (8), and (11) are not applicable. The required serial number marking in paragraph (o)(13) may be replaced by the batch number.

(2) Each receptacle must be marked with the words ''DO NOT REFILL'' in letters of at least 5 mm in height.

(3) A non-refillable pressure receptacle may, because of its size, substitute the marking required by this paragraph with a label. Reduction in marking size is authorized only as

prescribed in ISO 7225, Gas cylinders—Precautionary labels. (IBR, see § 171.7 of this subchapter).

(4) Each non-refillable pressure receptacle must also be legibly marked by stencilling the following statement: ''Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years in imprisonment (49 U.S.C. 5124).''

(5) No person may mark a non-refillable pressure receptacle as meeting the requirements of this section unless it was manufactured in conformance with this section and the manufacturer has a current approval issued by the Associate Administrator.

40. Section 178.74 is added to read as follows:

§ 178.74 Approval of MEGCs.

(a) *Application for design type approval.* (1) Each new MEGC design type must have a design approval certificate. An owner or manufacturer must apply to an approval agency that is approved by the Associate Administrator in accordance with subpart E of part 107 of this chapter to obtain approval of a new design. When a series of MEGCs is manufactured without change in the design, the certificate is valid for the entire series. The design approval certificate must refer to the prototype test report, the materials of construction of the manifold, the standards to which the pressure receptacles are made and an approval number. The compliance requirements or test methods applicable to MEGCs as specified in this subpart may be varied when the level of safety is determined to be equivalent to or exceed the requirements of this subchapter and is approved in writing by the Associate Administrator. A design approval may serve for the approval of smaller MEGCs made of materials of the same type and thickness, by the same fabrication techniques and with identical supports, equivalent closures and other appurtenances.

(2) Each application for design approval must be in English and contain the following information:

(i) Two complete copies of all engineering drawings, calculations, and test data necessary to ensure that the design meets the relevant specification.

(ii) The manufacturer's serial number that will be assigned to each MEGC.

(iii) A statement as to whether the design type has been examined by any approval agency previously and judged unacceptable. Affirmative statements must be documented with the name of the approval agency, reason for nonacceptance, and the nature of modifications made to the design type.

(2) *Actions by the approval agency.* The approval agency must review the application for design type approval, including all drawings and calculations, to ensure that the design of the MEGC meets all requirements of the relevant specification and to determine whether it is complete and conforms to the requirements of this section. An incomplete application will be returned to the applicant with the reasons why the application was returned. If the application is complete and all applicable requirements of this section are met, the approval agency must prepare a MEGC design approval certificate containing the manufacturer's name and address, results and conclusions of the examination and necessary data for identification of the design type. If the Associate Administrator approves the Design Type Approval Certificate application, the approval agency and the manufacturer must each maintain a copy of the approved drawings, calculations, and test data for at least 20 years.

(b) *Approval agency's responsibilities.* The approval agency is responsible for ensuring that the MEGC conforms to the design type approval. The approval agency must:

(1) Witness all tests required for the approval of the MEGC specified in this section and § 178.75.

(2) Ensure, through appropriate inspection, that each MEGC is fabricated in all respects in conformance with the approved drawings, calculations, and test data.

(3) Determine and ensure that the MEGC is suitable for its intended use and that it conforms to the requirements of this subchapter.

(4) Apply its name, identifying mark or identifying number, and the date the approval was issued, to the metal identification marking plate attached to the MEGC upon successful completion of all requirements of this subpart. Any approvals by the Associate Administrator authorizing design or construction alternatives (Alternate Arrangements) of the MEGC (see paragraph (a) of this section) must be indicated on the metal identification plate as specified in § 178.75(j).

(5) Prepare an approval certificate for each MEGC or, in the case of a series of identical MEGCs manufactured to a single design type, for each series of MEGCs. The approval certificate must include all of the following information:

(i) The information displayed on the metal identification plate required by § 178.75(j);

(ii) The results of the applicable framework test specified in ISO 1496–3 (IBR, see § 171.7 of this subchapter);

(iii) The results of the initial inspection and test specified in paragraph (h) of this section;

(iv) The results of the impact test specified in § 178.75(i)(4);

(v) Certification documents verifying that the cylinders and tubes conform to the applicable standards; and

(vi) A statement that the approval agency certifies the MEGC in accordance with the procedures in this section and that the MEGC is suitable for its intended purpose and meets the requirements of this subchapter. When a series of MEGCs is manufactured without change in the design type, the certificate may be valid for the entire series of MEGCs representing a single design type. The approval number must consist of the distinguishing sign or mark of the country (''USA'' for the United States of America) where the approval was granted and a registration number.

(6) Retain on file a copy of each approval certificate for at least 20 years.

(c) *Manufacturers' responsibilities.* The manufacturer is responsible for compliance with the applicable specifications for the design and construction of MEGCs. The manufacturer of a MEGC must:

(1) Comply with all the requirements of the applicable ISO standard specified in § 178.71;

(2) Obtain and use an approval agency to review the design, construction and certification of the MEGC;

(3) Provide a statement in the manufacturers' data report certifying that each MEGC manufactured complies with the relevant specification and all the applicable requirements of this subchapter; and

(4) Retain records for the MEGCs for at least 20 years. When required by the specification, the manufacturer must provide copies of the records to the approval agency, the owner or lessee of the MEGC, and to a representative of DOT, upon request.

(d) *Denial of application for approval.* If the Associate Administrator finds that the MEGC will not be approved for any reason, the Associate Administrator will notify the applicant in writing and provide the reason for the denial. The manufacturer may request that the Associate Administrator reconsider the decision. The application request must—

(1) Be written in English and filed within 90 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law; and

(3) Enclose any additional information needed to support the request to reconsider;

(e) *Appeal.* (1) A manufacturer whose reconsideration request is denied may appeal to the PHMSA Administrator. The appeal must—

(i) Be in writing and filed within 90 days of receipt of the Associate Administrator's decision on reconsideration;

(ii) State in detail any alleged errors of fact and law;

(iii) Enclose any additional information needed to support the appeal; and

(iv) State in detail the modification of the final decision sought.

(2) The Administrator will grant or deny the relief and inform the appellant in writing of the decision. The Administrator's decision is the final administrative action.

(f) *Modifications to approved MEGCs.* (1) Prior to modification of any approved MEGC that may affect conformance and safe use, and that may involve a change to the design type or affect its ability to retain the hazardous material in transportation, the MEGC's owner must inform the approval agency that prepared the initial approval certificate for the MEGC or, if the initial approval agency is unavailable, another approval agency, of the nature of the modification and request certification of the modification. The owner must supply the approval agency with all revised drawings, calculations, and test data relative to the intended modification. The MEGC's owner must also provide a statement as to whether the intended modification has been examined and determined to be unacceptable by any approval agency. The written statement must include the name of the approval agency, the reason for nonacceptance, and the nature of changes made to the modification since its original rejection.

(2) The approval agency must review the request for modification. If the approval agency determines that the proposed modification does not conform to the relevant specification, the approval agency must reject the request in accordance with paragraph (d) of this section. If the approval agency determined that the proposed modification conforms fully with the relevant specification, the request is accepted. If modification to an approved MEGC alters any information on the approval certificate, the approval agency must prepare a new approval certificate for the modified MEGC and submit the certificate to the Associate Administrator for approval. After receiving approval from the Associate Administrator, the approval agency must ensure that any necessary changes are made to the metal identification plate. A copy of each newly issued approval certificate must be retained by the approval agency and the MEGC's owner for at least 20 years. The approval agency must perform the following activities:

(i) Retain a set of the approved revised drawings, calculations, and data as specified in § 178.69(b)(4) for at least 20 years;

(ii) Ensure through appropriate inspection that all modifications conform to the revised drawings, calculations, and test data; and

(iii) Determine the extent to which retesting of the modified MEGC is necessary based on the nature of the proposed modification, and ensure that all required retests are satisfactorily performed.

(g) *Termination of Approval Certificate.* (1) The Associate Administrator may terminate an approval issued under this section if he or she determines that—

(i) Because of a change in circumstances, the approval no longer is needed or no longer would be granted if applied for;

(ii) Information upon which the approval was based is fraudulent or substantially erroneous;

(iii) Termination of the approval is necessary to adequately protect against risks to life and property; or

(iv) The MEGC does not meet the specification.

(2) Before an approval is terminated, the Associate Administrator will provide the person—

(i) Written notice of the facts or conduct believed to warrant the termination;

(ii) An opportunity to submit oral and written evidence; and

(3) An opportunity to demonstrate or achieve compliance with the applicable requirements.

(h) If the Associate Administrator determines that a certificate of approval must be terminated to preclude a significant and imminent adverse effect on public safety, the Associate Administrator may terminate the certificate immediately. In such circumstances, the opportunities of paragraphs (g)(2) and (3) of this section need not be provided prior to termination of the approval, but must be provided as soon as practicable thereafter.

41. Section 178.75 is added to read as follows:

§ 178.75 Specifications for MEGCs.

(a) *General.* Each MEGC must meet the requirements of this section. In a MEGC that meets the definition of a ''container'' within the terms of the International Convention for Safe Containers (CSC) must meet the requirements of the CSC as amended and 49 CFR parts 450 through 453, and must have a CSC approval plate.

(b) *Alternate Arrangements.* The technical requirements applicable to MEGCs may be varied when the level of safety is determined to be equivalent to or exceed the requirements of this subchapter. Such an alternate arrangement must be approved in writing by the Associate Administrator. MEGCs approved to an Alternate Arrangement must be marked as required by paragraph (j) of this section.

(c) *Definitions.* The following definitions apply:

Leakproofness test means a test using gas subjecting the pressure receptacles and the service equipment of the MEGC to an effective internal pressure of not less than 20% of the test pressure.

Manifold means an assembly of piping and valves connecting the filling and/or discharge openings of the pressure receptacles.

Maximum permissible gross mass or MPGM means the heaviest load authorized for transport (sum of the tare mass of the MEGC, service equipment and pressure receptacle).

Service equipment means manifold system (measuring instruments, piping and safety devices).

Shut-off valve means a valve that stops the flow of gas.

Structural equipment means the reinforcing, fastening, protective and stabilizing members external to the pressure receptacles.

(d) *General design and construction requirements.* (1) The MEGC must be capable of being loaded and discharged without the removal of its structural equipment. It must possess stabilizing members external to the pressure receptacles to provide structural integrity for handling and transport. MEGCs must be designed and constructed with supports to provide a secure base during transport and with lifting and tie-down attachments that are adequate for lifting the MEGC including when loaded to its maximum permissible gross mass. The MEGC must be designed to be loaded onto a transport vehicle or vessel and equipped with skids, mountings or accessories to facilitate mechanical handling.

(2) MEGCs must be designed, manufactured and equipped to withstand, without loss of contents, all normal handling and transportation conditions. The design must take into account the effects of dynamic loading and fatigue.

(3) Each pressure receptacle of a MEGC must be of the same design type, seamless steel, and constructed and tested according to one of the following ISO standards:

(i) ISO 9809–1; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa. (IBR, see § 171.7 of this subchapter);

(ii) ISO 9809–2; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa. (IBR, see § 171.7 of this subchapter);

(iii) ISO 9809–3; Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders. (IBR, see § 171.7 of this subchapter); or

(iv) ISO 11120; Gas cylinders-Refillable seamless steel tubes of water capacity between 150 L and 3000 L—Design, construction and testing. (IBR, see § 171.7 of this subchapter).

(4) Pressure receptacles of MEGCs, fittings, and pipework must be constructed of a material that is compatible with the hazardous materials intended to be transported, as specified in this subchapter.

(5) Contact between dissimilar metals that could result in damage by galvanic action must be prevented by appropriate means.

(6) The materials of the MEGC, including any devices, gaskets, and accessories, must have no adverse effect on the gases intended for transport in the MEGC.

(7) MEGCs must be designed to withstand, without loss of contents, at least the internal pressure due to the contents, and the static, dynamic and thermal loads during normal conditions of handling and transport. The design must take into account the effects of fatigue, caused by repeated application of these loads through the expected life of the MEGC.

(8) MEGCs and their fastenings must, under the maximum permissible load, be capable of withstanding the following separately applied static forces (for calculation purposes, acceleration due to gravity (g) = 9.81 m/s^2):

(i) In the direction of travel: 2g (twice the MPGM multiplied by the acceleration due to gravity);

(ii) Horizontally at right angles to the direction of travel: 1g (the MPGM multiplied by the acceleration due to gravity. When the direction of travel is not clearly determined, the forces must be equal to twice the MPGM);

(iii) Vertically upwards: 1g (the MPGM multiplied by the acceleration due to gravity); and

(iv) Vertically downwards: 2g (twice the MPGM (total loading including the effect of gravity) multiplied by the acceleration due to gravity.

(9) Under each of the forces specified in paragraph (d)(8) of this section, the stress at the most severely stressed point of the pressure receptacles must not exceed the values given in the applicable design specifications (*e.g.*, ISO 11120).

(10) Under each of the forces specified in paragraph (d)(8) of this section, the safety factor for the framework and fastenings must be as follows:

(i) For steels having a clearly defined yield point, a safety factor of 1.5 in relation to the guaranteed yield strength; or

(ii) For steels with no clearly defined yield point, a safety factor of 1.5 in relation to the guaranteed 0.2 percent proof strength and, for austenitic steels, the 1 percent proof strength.

(11) MEGCs must be capable of being electrically grounded to prevent electrostatic discharge when intended for flammable gases.

(12) The pressure receptacles of a MEGC must be secured in a manner to prevent movement that could result in damage to the structure and concentration of harmful localized stresses.

(e) *Service equipment.* (1) Service equipment must be arranged so that it is protected from mechanical damage by external forces during handling and transportation. When the connections between the frame and the pressure receptacles allow relative movement between the subassemblies, the equipment must be fastened to allow movement to prevent damage to any working part. The manifolds, discharge fittings (pipe sockets, shut-off devices), and shut-off valves must be protected from damage by external forces. Manifold piping leading to shut-off valves must be sufficiently flexible to protect the valves and the piping from shearing, or releasing the pressure receptacle contents. The filling and discharge devices, including flanges or threaded plugs, and any protective caps must be capable of being secured against unintended opening.

(2) Each pressure receptacle intended for the transport of Division 2.3 gases must be equipped with an individual shut-off valve. The manifold for Division 2.3 liquefied gases must be designed so that each pressure receptacle can be filled separately and be kept isolated by a valve capable of being closed during transit. For Division 2.1 gases, the pressure receptacles must be isolated by an individual shut-off valve into assemblies of not more than 3,000 L.

(3) For MEGC filling and discharge openings, two valves in series must be placed in an accessible position on each discharge and filling pipe. One of the valves may be a backflow prevention valve. The filling and discharge devices may be equipped to a manifold. For sections of piping which can be closed at both ends and where a liquid product can be trapped, a pressure-relief valve must be provided to prevent excessive pressure build-up. The main isolation valves on a MEGC must be clearly marked to indicate their directions of closure. Each shut-off valve or other means of closure must be designed and constructed to withstand a pressure equal to or greater than 1.5 times the test pressure of the MEGC. All shut-off valves with screwed spindles must close by a clockwise motion of the handwheel. For other shut-off valves, the open and closed positions and the direction of closure must be clearly shown. All shut-off valves must be designed and positioned to prevent unintentional opening. Ductile metals must be used in the construction of valves or accessories.

(4) The piping must be designed, constructed and installed to avoid damage due to expansion and contraction, mechanical shock and vibration. Joints in tubing must be brazed or have an equally strong metal union. The melting point of brazing materials must be no lower than 525 °C (977 °F). The rated pressure of the service equipment and of the manifold must be not less than two-thirds of the test pressure of the pressure receptacles.

(f) *Pressure relief devices.* Each pressure receptacle must be equipped with one or more pressure relief devices as specified in § 173.301(f) of this subchapter. When pressure relief devices are installed, each pressure receptacle or group of pressure receptacles of a MEGC that can be isolated must be equipped with one or more pressure relief devices. Pressure relief devices must be of a type that will resist dynamic forces including liquid surge and must be designed to prevent the entry of foreign matter, the leakage of gas and the development of any dangerous excess pressure.

(1) The size of the pressure relief devices: CGA S–1.1 (IBR, see § 171.7 of this subchapter) must be used to determine the relief capacity of individual pressure receptacles.

(2) Connections to pressure-relief devices: Connections to pressure relief devices must be of sufficient size to enable the required discharge to pass unrestricted to the pressure relief device. A shut-off valve installed between the pressure receptacle and the pressure relief device is prohibited, except where duplicate devices are provided for maintenance or other reasons, and the shut-off valves serving the devices actually in use are locked open, or the shut-off valves are interlocked so that at least one of the duplicate devices is always operable and capable of meeting the requirements of paragraph (f)(1) of this section. No obstruction is permitted in an opening leading to or leaving from a vent or pressure-relief device that might restrict or cut-off the flow from the pressure receptacle to that device. The opening through all piping and fittings must have at least the same flow area as the inlet of the pressure relief device to which it is connected. The nominal size of the discharge piping must be at least as large as that of the pressure relief device.

(3) Location of pressure-relief devices: For liquefied gases, each pressure relief device must, under maximum filling conditions, be in communication with the vapor space of the pressure receptacles. The devices, when installed, must be arranged to ensure the escaping vapor is discharged upwards and unrestrictedly to prevent impingement of escaping gas or liquid upon the MEGC, its pressure receptacles or personnel. For flammable, pyrophoric and oxidizing gases, the escaping gas must be directed away from the pressure receptacle in such a manner that it cannot impinge upon the other pressure receptacles. Heat resistant protective devices that deflect the flow of gas are permissible provided the required pressure relief device capacity is not reduced. Arrangements must be made to prevent access to the pressure relief devices by unauthorized persons and to protect the devices from damage caused by rollover.

(g) *Gauging devices.* When a MEGC is intended to be filled by mass, it must be equipped with one or more gauging devices. Glass level-gauges and gauges made of other fragile material are prohibited.

(h) *MEGC supports, frameworks, lifting and tie-down attachments.* (1) MEGCs must be designed and constructed with a support structure to provide a secure base during transport. MEGCs must be protected against damage to the pressure receptacles and service equipment resulting from lateral and longitudinal impact and overturning. The forces specified in paragraph (d)(8) of this section, and the safety factor specified in paragraph (d)(10) of this section must be considered in this aspect of the design. Skids, frameworks, cradles or other similar structures are acceptable. If the pressure receptacles and service equipment are so constructed as to withstand impact and overturning, additional protective support structure is not required (see paragraph (h)(4) of this section).

(2) The combined stresses caused by pressure receptacle mountings (*e.g.* cradles, frameworks, etc.) and MEGC lifting and tie-down attachments must not cause excessive stress in any pressure receptacle. Permanent lifting and tie-down attachments must be equipped to all MEGCs. Any welding of mountings or attachments onto the pressure receptacles is prohibited.

(3) The effects of environmental corrosion must be taken into account in the design of supports and frameworks.

(4) When MEGCs are not protected during transport as specified in paragraph (h)(1) of this section, the pressure receptacles and service equipment must be protected against damage resulting from lateral or longitudinal impact or overturning. External fittings must be protected against release of the pressure receptacles' contents upon impact or overturning of the MEGC on its fittings. Particular attention must be paid to the protection of the manifold. Examples of protection include:

(i) Protection against lateral impact, which may consist of longitudinal bars;

(ii) Protection against overturning, which may consist of reinforcement rings or bars fixed across the frame;

(iii) Protection against rear impact, which may consist of a bumper or frame;

(iv) Protection of the pressure receptacles and service equipment against damage from impact or overturning by use of an ISO frame according to the relevant provisions of ISO 1496–3.

(i) *Initial inspection and test.* The pressure receptacles and items of equipment of each MEGC must be inspected and tested before being put into service for the first time (initial inspection and test). This initial inspection and test of a MEGC must include the following:

(1) A check of the design characteristics.

(2) An external examination of the MEGC and its fittings, taking into account the hazardous materials to be transported.

(3) A pressure test performed at the test pressures specified in § 173.304b(b)(1) and (2) of this subchapter. The pressure test of the manifold may be performed as a hydraulic test or by using another liquid or gas. A leakproofness test and a test of the satisfactory operation of all service equipment must also be performed before the MEGC is placed into service. When the pressure receptacles and their fittings have been pressure-tested separately, they must be subjected to a leakproof test after assembly.

(4) A MEGC that meets the definition of ''container'' in the CSC (see 49 CFR 450.3(a)(2)) must be subjected to an impact test using a prototype representing each design type. The prototype MEGC must be shown to be capable of absorbing the forces resulting from an impact not less than 4 times (4g) the MPGM of the fully loaded MEGC, at a duration typical of the mechanical shocks experienced in rail transport. A listing of acceptable methods for performing the impact test is provided in the UN Model Regulations (IBR, see § 171.7 of this subchapter).

(j) *Marking.* (1) Each MEGC must be equipped with a corrosion resistant metal plate permanently attached to the MEGC in a conspicuous place readily accessible for inspection. The pressure receptacles must be marked according to this section. Affixing the metal plate to a pressure receptacle is prohibited. At a minimum, the following information must be marked on the plate by stamping or by any other equivalent method:

Country of manufacture
UN

Approval Country
Approval Number
Alternate Arrangements (see § 178.75(b))
MEGC Manufacturer's name or mark
MEGC's serial number
Approval agency (Authorized body for the design approval)
Year of manufacture
Test pressure: _____ bar gauge
Design temperature range _____ °C to _____ °C
Number of pressure receptacles _____
Total water capacity _____ liters
Initial pressure test date and identification of the Approval Agency
Date and type of most recent periodic tests
Year _____ Month _____ Type _____
(*e.g.* 2004–05, AE/UE, where ''AE''

represents acoustic emission and ''UE'' represents ultrasonic examination)

Stamp of the approval agency who performed or witnessed the most recent test

(2) The following information must be marked on a metal plate firmly secured to the MEGC:

Name of the operator

Maximum permissible load mass _____ kg

Working pressure at 15°C: _____ bar gauge

Maximum permissible gross mass (MPGM) _____ kg

Unladen (tare) mass _____ kg

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

43. Section 180.201 is revised to read as follows:

§ 180.201 Applicability.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 178 of this chapter, for the continuing qualification, maintenance, or periodic requalification of DOT specification and exemption cylinders and UN pressure receptacles.

44. In § 180.203, the introductory paragraph is revised to read as follows:

§ 180.203 Definitions.

As used in this section, the word ''cylinder'' includes UN pressure receptacles. In addition to the definitions contained in § 171.8 of this subchapter, the following definitions apply to this subpart:

* * * * *

§ 180.205 [Amended]

45. In § 180.205, the section heading is revised to read: ''General requirements for requalification of specification cylinders.''

46. Section 180.207 is added to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

(a) *General.* (1) Each UN pressure receptacle used for the transportation of hazardous materials must conform to the requirements prescribed in paragraphs (a), (b) and (d) in § 180.205.

(2) No pressure receptacle due for requalification may be filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in accordance with this subpart. A cylinder may be requalified at any time during or before the month and year that the requalification is due. However, a cylinder filled before the requalification becomes due may remain in service until it is emptied.

(3) A cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired. No person may requalify a UN composite pressure receptacle for continued use beyond its 15-years authorized service life unless approval has been obtained in writing from the Associate Administrator.

(b) *Periodic requalification of UN pressure receptacles.* (1) Each cylinder that is successfully requalified in accordance with the requirements specified in this section must be marked in accordance with § 180.213. The requalification results must be recorded in accordance with § 180.215.

(2) Each cylinder that fails requalification must be rejected or condemned in accordance with the applicable ISO requalification standard.

(c) *Requalification interval.* Each UN pressure receptacle that becomes due for periodic requalification must be requalified at the interval specified in the following table:

TABLE 1.—REQUALIFICATION INTERVALS OF UN PRESSURE RECEPTACLES

Interval (years)	UN pressure receptacles/hazardous materials
10	Pressure receptacles for all hazardous materials except as noted below (also for dissolved acetylene, see paragraph (c)(3) of this section):
5	Composite cylinders. All Division 2.3 materials. UN1013, Carbon dioxide. UN1043, Fertilizer ammoniating solution with free ammonia. UN1051, Hydrogen cyanide, stabilized *containing less than 3% water.* UN1052, Hydrogen fluoride, anhydrous. UN1745, Bromine pentafluoride. UN1746, Bromine trifluoride. UN2073, Ammonia solution. UN2495, Iodine pentafluoride. UN2983, Ethylene Oxide and Propylene oxide mixture, *not more than 30% ethylene oxide.*

(d) *Requalification procedures.* Each UN pressure receptacle that becomes due for requalification must be requalified at the interval prescribed in paragraph (b) of this section and in accordance with the procedures contained in the following standard, as applicable. When a pressure test is performed on a UN pressure receptacle, the test must be a water jacket volumetric expansion test suitable for the determination of the cylinder expansion. An alternative method (*e.g.* proof pressure test) may not be performed unless prior approval has been obtained in writing from the Associate Administrator. The test equipment must be calibrated daily in accordance with § 180.205(g).

(1) Seamless steel: Each seamless steel UN pressure receptacle, including MEGC's pressure receptacles, must be requalified in accordance with ISO 6406 (IBR; see § 171.7 of this subchapter), except that UN pressure receptacles made of high strength steel with tensile strength equal to or greater than 950 MPa and UN tubes must be requalified as specified in § 180.209 or in accordance with requalification procedures approved by the Associate Administrator.

(2) Seamless UN aluminum: Each seamless aluminum UN pressure receptacle must be requalified in accordance with ISO 10461 (IBR; see § 171.7 of this subchapter).

(3) Dissolved acetylene UN cylinders: Each dissolved acetylene cylinder must be requalified in accordance with ISO 10462 (IBR; see § 171.7 of this subchapter). The porous mass and the shell must be requalified no sooner than 3 years, ± 6 months, from the date of manufacture. Thereafter, subsequent

requalifications of the porous mass and shell must be performed at least once every ten years.

(4) Composite UN cylinders: Each composite cylinder must be inspected and tested in accordance with ISO 11623 (IBR; see § 171.7 of this subchapter).

47. Section 180.212 is added to read as follows:

§ 180.212 Repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.

(a) *General requirements for repair of DOT 3-series cylinders and UN pressure receptacles.* (1) No person may repair a DOT 3-series cylinder or a seamless UN pressure receptacle unless—

(i) The repair facility holds an approval issued under the provisions in § 107.805 of this subchapter; and

(ii) Except as provided in paragraph (b) of this section, the repair and the inspection is performed under the provisions of an approval issued under subpart H of Part 107 of this subchapter and conform to the applicable cylinder specification or ISO standard contained in part 178 of this subchapter.

(2) The person performing the repair must prepare a report containing, at a minimum, the results prescribed in § 180.215.

(b) *Repairs not requiring prior approval.* Approval is not required for the following specific repairs:

(1) The removal and replacement of a neck ring or foot ring on a DOT 3A, 3AA or 3B cylinder or a UN pressure receptacle that does not affect a pressure part of the cylinder when the repair is performed by a repair facility or a cylinder manufacturer of these types of cylinders. The repair may be made by welding or brazing in conformance with the original specification. After removal and before replacement, the cylinder must be visually inspected and any defective cylinder must be rejected. The heat treatment, testing and inspection of the repair must be performed under the supervision of an inspector and must be performed in accordance with the original specification.

(2) External re-threading of DOT 3AX, 3AAX or 3T specification cylinders or a UN pressure receptacle mounted in a MEGC; or the internal re-threading of a DOT–3 series cylinder or a seamless UN pressure receptacle when performed by the original manufacturer of the cylinder. The repair work must be performed under the supervision of an independent inspection agency. Upon completion of the re-threading, the threads must be gauged in accordance with Federal Standard H–28 or an equivalent standard containing the same specification limits. The re-threaded cylinder must be stamped clearly and legibly with the words ''RETHREAD'' on the shoulder, top head, or neck. No DOT specification cylinder or UN cylinder may be re-threaded more than one time without approval of the Associate Administrator.

48. In § 180.213, paragraphs (a), (f)(1), and (f)(7) are revised, and paragraph (c)(3) and (f)(8) are added, to read as follows:

§ 180.213 Requalification markings.

(a) *General.* Each cylinder (including UN pressure receptacles) requalified in accordance with this subpart with acceptable results must be marked as specified in this section. Required specification markings may not be altered or removed.

* * * * *

(c) * * *

(3) For a composite cylinder, the requalification markings must be applied on a pressure sensitive label, securely affixed and overcoated with epoxy near the original manufacturer's label. Stamping of the composite surface is not authorized.

* * * * *

(f) * * *

(1) For designation of the 5-year volumetric expansion test, 10-year volumetric expansion test for UN cylinders and cylinders conforming to § 180.209(f) and (h), or 12-year volumetric expansion test for fire extinguishers conforming to § 173.309(b) of this subchapter and cylinders conforming to §§ 180.209(e) and 178.209(g), the marking is as illustrated in paragraph (d) of this section.

* * * * *

(7) For designation of DOT 8 series and UN cylinder shell and porous filler requalification, the marking is as illustrated in paragraph (d) of this section, except that the ''X'' is replaced with the letters ''FS''.

(8) For designation of a nondestructive test combined with a visual inspection, the marking is as illustrated in paragraph (d) of this section, except that the ''X'' is replaced with the letters ''AE'' for acoustic emission and ''UE'' for ultrasonic examination.

49. Section 180.217 is added to read as follows:

§ 180.217 Requalification requirements for MEGCs.

(a) *Periodic inspections.* Each MEGC must be given an initial visual inspection and test in accordance with § 178.75(i) of this subchapter before being put into service for the first time. After the initial inspection, a MEGC must be inspected at least once every five years.

(1) The 5-year periodic inspection must include an external examination of the structure, the pressure receptacles and the service equipment, as follows:

(i) The pressure receptacles are inspected externally for pitting, corrosion, abrasions, dents, distortions, defects in welds or any other conditions, including leakage, that might render the MEGC unsafe for transport.

(ii) The piping, valves, and gaskets are inspected for corroded areas, defects, and other conditions, including leakage, that might render the MEGC unsafe for filling, discharge or transport.

(iii) Missing or loose bolts or nuts on any flanged connection or blank flange are replaced or tightened.

(iv) All emergency devices and valves are free from corrosion, distortion and any damage or defect that could prevent their normal operation. Remote closure devices and self-closing stop-valves must be operated to demonstrate proper operation.

(v) Required markings on the MEGC are legible in accordance with the applicable requirements.

(vi) The framework, the supports and the arrangements for lifting the MEGC are in satisfactory condition.

(2) The MEGC's pressure receptacles and piping must be periodically requalified as prescribed in § 180.207(c), at the interval specified in Table 1 in § 180.207.

(b) *Exceptional inspection and test.* If a MEGC shows evidence of damaged or corroded areas, leakage, or other conditions that indicate a deficiency that could affect the integrity of the MEGC, an exceptional inspection and test must be performed, regardless of the last periodic inspection and test. The extent of the exceptional inspection and test will depend on the amount of damage or deterioration of the MEGC. As a minimum, an exceptional inspection of a MEGC must include inspection as specified in paragraph (a)(1) of this section.

(c) *Correction of unsafe condition.* When evidence of any unsafe condition is discovered, the MEGC may not be returned to service until the unsafe condition has been corrected and the MEGC has been requalified in accordance with the applicable tests and inspection.

(d) *Repairs and modifications to MEGCs.* No person may perform a modification to an approved MEGC that may affect conformance to the applicable ISO standard or safe use, and that involve a change to the design type

or affect its ability to retain the hazardous material in transportation. Before making any modification changes to an approved MEGC, the owner must obtain approval from the Associate Administrator as prescribed in § 178.74 of this subchapter. The repair of a MEGC's structural equipment is authorized provided such repairs are made in accordance with the requirements prescribed for its approved design and construction. Any repair to the pressure receptacles of a MEGC must meet the requirements of § 180.212.

(e) *Requalification markings.* Each MEGC must be durably and legibly marked in English, with the year and month, and the type of the most recent periodic requalification performed (*e.g.*, 2004–05 AE/UE, where ''AE'' represents acoustic emission and ''UE'' represents ultrasonic examination) followed by the stamp of the approval agency who performed or witnessed the most recent test.

(f) *Records.* The owner of each MEGC or the owner's authorized agent must retain a written record of the date and results of all repairs and required inspections and tests. The report must contain the name and address of the person performing the inspection or test. The periodic test and inspection records must be retained until the next inspection or test is completed. Repair records and the initial exceptional inspection and test records must be retained during the period the MEGC is in service and for one year thereafter. These records must be made available for inspection by a representative of the Department on request.

Issued in Washington, DC, on February 22, 2005, under authority delegated in 49 CFR Part 106.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

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Wednesday,
March 9, 2005

Part IV

Department of the Interior

Bureau of Indian Affairs
Office of the Secretary

25 CFR Part 15; 43 CFR Part 4
Probate of Indian Trust Estates; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Part 4

RIN 1094–AA50

Probate of Indian Trust Estates

AGENCY: Bureau of Indian Affairs; Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of Hearings and Appeals (OHA), Department of the Interior (the Department), are revising their regulations dealing with the probate of Indian trust estates to reflect an organizational change. The Department is consolidating the probate adjudication functions previously handled by attorney decision makers in BIA and by administrative law judges and Indian probate judges in OHA into a new Probate Hearings Division within OHA. As a result, this rule transfers various regulatory provisions dealing with attorney decision makers from BIA's regulations to OHA's.

DATES: *Effective Date:* March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Robert S. More, Director, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, 703–235–3810.

SUPPLEMENTARY INFORMATION:

I. Background

In 2001, BIA and OHA published final rules making numerous changes to the Department's procedures for processing and adjudicating Indian probate cases. BIA published a new 25 CFR part 15 in January, 66 FR 7089 (Jan. 22, 2001), and OHA made conforming changes to its regulations in 43 CFR part 4, subpart D, in June and December, 66 FR 32888 (June 18, 2001), 67656 (Dec. 31, 2001). Among the most significant of the various changes was the creation of the position of attorney decision maker in BIA to handle probate cases that do not require an evidentiary hearing.

Under the 2001 BIA regulations, once a probate case had been prepared for adjudication, a probate specialist would review the case and, applying criteria set forth in the regulations, determine whether the case should be referred to an attorney decision maker in BIA or an administrative law judge (ALJ) or Indian probate judge in OHA. The probable heirs and beneficiaries were notified of the probate specialist's determination, and if the case was deemed appropriate for an attorney decision maker, they were given an opportunity to request a formal hearing before an ALJ or Indian probate judge. Over the last 4 years, thousands of Indian probate cases have been decided by attorney decision makers in BIA, and thousands more by ALJs and Indian probate judges in OHA.

Beginning in 2002, the Department has worked diligently to redesign its business processes to build a highly effective fiduciary trust services organization. The ''To-Be'' model of that organization—now known as the Fiduciary Trust Model—is the outcome of a 3-year effort guided by the Department's *Comprehensive Trust Management Plan*.

The redesign covered eight trust business process areas, including probate, that were identified for study and reengineering. By early 2003, the Department had detailed the existing (''As-Is'') process for each area and set about developing recommendations for an improved (''To-Be'') process. In the probate area, the chief recommendations to emerge from the ''To-Be'' Trust Business Model were to consolidate in a single organization the probate adjudication functions being handled separately by BIA and OHA deciding officials, and to give the attorney decision makers additional authority to adjudicate Indian probates.

Consolidation was seen as leading to increased efficiency, improved service to beneficiaries, and greater consistency in probate decisions. And extending the authority of the attorney decision makers was seen as leading to greater flexibility in their use as deciding officials.

During the last quarter of 2003 and the first quarter of 2004, the Department held a series of consultation sessions with tribes and other stakeholders around the country regarding the ''To-Be'' Trust Business Model recommendations. The tribes' general reaction to the recommendations concerning probate adjudication was favorable.

In August 2004, the Department approved the consolidation recommendation and assigned the consolidated organization to OHA. The recommendation to extend the authority of the attorney decision makers was referred to OHA to evaluate following the consolidation, with a goal of making the best use of all the available adjudicatory resources.

Consequently, OHA has created a Probate Hearings Division to bring together the attorney decision makers and their support staff from BIA and the probate ALJs, Indian probate judges, attorneys, and their support staff from OHA.

This rule is critical to the initial implementation of the Fiduciary Trust Model recommendations regarding probate. With the transfer of the attorney decision makers from BIA to OHA, the regulatory provisions governing their authority and procedures must likewise be transferred from BIA's regulations in 25 CFR part 15 to OHA's regulations in 43 CFR part 4, subpart D. Other minor changes to BIA's and OHA's procedures are being made as well, as described below.

While these minor procedural and editorial changes do not require public notice and comment, OHA recognizes that more substantial changes to its probate regulations will be necessary to fully implement both the Fiduciary Trust Model and the newly enacted American Indian Probate Reform Act of 2004, Pub. L. 108–374. OHA therefore anticipates engaging in notice-and-comment rulemaking in 2005 to address a number of issues that are beyond the scope of this rule.

II. Section-by-Section Analysis

A. 25 CFR Part 15

As noted in the Summary above, this rule transfers various regulatory provisions dealing with attorney decision makers from BIA's regulations in 25 CFR part 15 to OHA's regulations in 43 CFR part 4. These changes result in a partial restructuring of the part 15 regulations. Sections 15.1 through 15.108 and 15.201 retain their current numbering and content, although the language has been simplified, and other minor textual changes have been made in places as noted below. But the remainder of part 15 has been restructured. The following table lists the affected sections from the 2001 version of part 15 and their corresponding provisions in the revised regulations (if any).

2001 rule	This rule
25 CFR 15.109	43 CFR 4.208.
25 CFR 15.202	25 CFR 15.203.
25 CFR 15.203	25 CFR 15.301; 43 CFR 4.211.
25 CFR 15.204	43 CFR 4.202.
25 CFR 15.205	43 CFR 4.202.
25 CFR 15.206	43 CFR 4.212.
25 CFR 15.301	43 CFR 4.213.
25 CFR 15.302	(None).
25 CFR 15.303	25 CFR 15.202.
25 CFR 15.304	43 CFR 4.250.
25 CFR 15.305	43 CFR 4.251.
25 CFR 15.306	43 CFR 4.251.
25 CFR 15.307	43 CFR 4.251.
25 CFR 15.308	43 CFR 4.251.

2001 rule	This rule
25 CFR 15.309	43 CFR 4.251.
25 CFR 15.310	43 CFR 4.213.
25 CFR 15.311	43 CFR 4.214.
25 CFR 15.312	25 CFR 15.303.
25 CFR 15.401	43 CFR 4.215.
25 CFR 15.402	43 CFR 4.215.
25 CFR 15.403	43 CFR 4.215.
25 CFR 15.404	43 CFR 4.215.
25 CFR 15.405	43 CFR 4.215.
25 CFR 15.501	25 CFR 15.401.
25 CFR 15.502	25 CFR 15.401.
25 CFR 15.503	25 CFR 15.402.
25 CFR 15.504	25 CFR 15.403.

As the table indicates, section 15.302 from the 2001 rule has been removed. It stated that, ''Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, the law of the state where the decedent was domiciled will determine the distribution of the estate.'' This regulation had proved unhelpful in practice and potentially misleading since, in the majority of cases, federal law ''otherwise provided.''

Where trust lands are involved, intestate succession has generally been determined by the law of the state where such lands are located (*see* 25 U.S.C. 348), which is not necessarily where the decedent was domiciled. In some instances, tribal probate codes govern. Moreover, state law does not determine the distribution of estates in testate cases; federal law does. *E.g., Estate of Reuben Mesteth*, 16 IBIA 148 (1988). ''[T]he law of the state where the decedent was domiciled'' has generally governed the distribution of trust personal property in intestate cases, but even that rule will change under the new American Indian Probate Reform Act of 2004, which contains a federal intestate succession code.

The paragraphs below describe other changes from the 2001 rule, following the numbering scheme used in this new rule.

Section 15.2 What Terms Do I Need To Know?

The definition of ''deciding official'' has been changed to include only the Departmental officials who have been given the authority to decide Indian probate matters. At the time of the 2001 rule, various BIA officials could handle summary cases, including a regional director, agency superintendent, field representative, or attorney decision maker. Shortly thereafter, BIA assigned this responsibility to its attorney decision makers exclusively. Now that the attorney decision makers are joining the ALJs and Indian probate judges in OHA, the term ''deciding official'' has been defined to mean only those officials.

The definitions of ''ALJ'' and ''attorney decision maker'' have been revised and a definition of ''Indian probate judge'' has been added to more clearly distinguish the three types of deciding officials. ALJs and Indian probate judges have the same authority to conduct formal probate hearings and render probate decisions, but their positions are governed by different provisions of Title 5, U.S. Code. Attorney decision makers are authorized to conduct informal probate hearings and render probate decisions in cases that do not require a formal hearing.

Definitions have been added for ''formal hearing'' and ''informal hearing'' to further clarify the roles of the three deciding officials.

Other minor changes have been made to a few of the definitions in this section. For example, a sentence has been added to the definition of ''beneficiary'' to clarify that it includes both a devisee (someone who receives real property in a will) and a legatee (someone who receives personal property in a will). And the term ''codicil'' is now a separately defined term, rather than being included in the definition of ''will'' as in the 2001 rule. Because the Office of Trust Funds Management no longer exists as a separate entity within the Office of the Special Trustee, the definition of ''OTFM'' has been replaced with a definition of ''OST.''

Section 15.4 How Does the Probate Process Work?

Under the 2001 rule, BIA prepared the probate package in each case and then determined whether the case should be referred to a deciding official in BIA or a deciding official in OHA for further processing. With the consolidation of the deciding officials in OHA, BIA will now refer all completed probate packages to OHA, and OHA will make the case assignments. Paragraph (c) has been revised to reflect this change.

Section 15.101 How Do I Begin the Probate Process?

This section has been revised to conform to existing practice and simplify the requirements for initiating the probate process. Under both the 2001 rule and this rule, a person who wants BIA to initiate a probate process must provide a certified copy of the death certificate if one exists. If a death certificate does not exist, the 2001 rule required some other evidence of the death, such as a newspaper obituary notice or a church or court record, with a supporting affidavit from the tribe with whom the decedent was associated or someone who knows about the decedent's death.

In practice, BIA and OHA found that, if a death certificate does not exist, other documentary evidence of the death is often lacking as well. In such cases, an affidavit from someone who knows of the death has been accepted. The revised regulation adopts this approach by requiring an affidavit where there is no death certificate. Any supporting documentation should be provided if it is available, but it is not essential to initiating the probate process.

Section 15.203 What Must the Complete Probate Package Contain?

Paragraph (b) has been revised to specify that BIA will provide the enrollment or other identifying number for each prospective heir or beneficiary, if such number has been assigned. BIA provides this information in most instances already, but the requirement has been added to the regulations because of the important role these numbers play in correctly identifying interested parties and in processing the probate.

Section 15.301 What Happens After BIA Prepares the Probate Package?

This section, renumbered from former section 15.203, has been revised to reflect the change discussed above in connection with section 15.4. The assignment of a probate case to an attorney decision maker for an informal hearing or to an ALJ or Indian probate judge for a formal hearing will be made by OHA, not by the probate specialist. However, the probate specialist will continue to provide interested parties with the notice described in former section 15.203(c), (e), including notice of the right of the probable heirs or beneficiaries to request a formal hearing.

Section 15.302 What Happens After the Probate Package Is Referred to OHA?

This section is new. It states that, after OHA receives the probate package from BIA, it will assign the case to a deciding official for further proceedings in accordance with 43 CFR part 4.

Section 15.303 What Happens After the Probate Decision Is Made?

This section is renumbered from former section 15.312 and incorporates provisions from former section 15.404 as well as from former 43 CFR 4.241(a). The references to ''appeal'' in former sections 15.312 and 15.404 have been expanded to include a request for de novo review following an attorney decision maker's decision under 43 CFR 4.215, a request for rehearing under 43

CFR 4.241, or an appeal under 43 CFR 4.320 *et seq.*

Under former section 15.401 *et seq.*, a request for review following an attorney decision maker's decision was termed an ''appeal,'' but that was arguably a misnomer, since the review by an ALJ or Indian probate judge was de novo. This rule uses the term ''request for de novo review'' to distinguish this review process from an appeal that can be taken from certain decisions by an ALJ or Indian probate judge to the Interior Board of Indian Appeals.

B. 43 CFR Part 4

Transfer of the regulatory provisions dealing with attorney decision makers from BIA's regulations in 25 CFR part 15 to OHA's regulations in 43 CFR part 4 requires minimal restructuring of the part 4, subpart D regulations. Sections 4.200 through 4.210, 4.220 through 4.242, and 4.250 through 4.357 retain their current numbering and content, although the language has been simplified, several sections have been divided (or further divided) into paragraphs and subparagraphs for ease of reference, and as noted below, other minor textual changes have been made in places. The following table lists the sections from the 2001 version of part 4 that are affected by the restructuring and their corresponding provisions in the revised regulations.

2001 rule	This rule
43 CFR 4.211	43 CFR 4.216.
43 CFR 4.212	43 CFR 4.217.
43 CFR 4.243	43 CFR 4.215.

This rule incorporates new sections 4.211 through 4.215, based on corresponding provisions from 25 CFR part 15, as described below. The paragraphs below describe other changes from the 2001 rule, following the numbering scheme used in this new rule. OHA is also changing one portion of its general rules in 43 CFR part 4, subpart B, as explained in the following paragraph.

Section 4.27 Standards of Conduct

Paragraph (c) of this section deals with the disqualification of an administrative law judge or appeals board member. The paragraph has been revised to cover all OHA deciding officials, including attorney decision makers and Indian probate judges.

Section 4.200 Scope of Regulations

This section has been converted to a table for ease of reference, and the provisions in paragraphs (a)(2)(i) through (iii) have been added to clarify which portions of the part 4, subpart D regulations apply to different types of probate proceedings. Paragraph (a)(5) has been added to cover proceedings under the White Earth Reservation Land Settlement Act.

Section 4.201 Definitions

A number of definitions have been revised or added to make this section consistent with 25 CFR 15.2. See the discussion above regarding ''administrative law judge'' (''ALJ'' in section 15.2), ''attorney decision maker,'' ''beneficiary,'' ''codicil,'' ''formal hearing,'' ''Indian probate judge,'' and ''informal hearing.'' Other conforming changes include the addition of definitions for ''LTRO,'' ''OHA,'' and ''decision or order,'' and replacing the term ''party in interest'' with ''interested party.''

A definition of ''de novo review'' has been added to go with the new section 4.215 (see discussion above under section 15.303). Definitions have also been added for a few other terms used in part 4, subpart D: ''bequeath,'' ''bequest,'' and ''devise.''

Section 4.202 General Authority of Deciding Officials

This revised section is a combination of former 43 CFR 4.202, which dealt with the authority of ALJs and Indian probate judges, and former 25 CFR 15.204-.205, which set forth criteria for cases that could not be handled by an attorney decision maker. Paragraph (a) provides that an attorney decision maker may conduct an informal hearing and render a decision in any probate case that does not require a formal hearing and a decision by an ALJ or Indian probate judge. Paragraph (b) then sets forth the criteria for cases that require a formal hearing and a decision by an ALJ or Indian probate judge.

One criterion from former section 15.205 has been omitted in new section 4.202(b). Under former sections 15.109 and 15.205(c)(8), a disclaimer from a non-Indian probable heir or beneficiary could be accepted by any deciding official, while a disclaimer from an Indian probable heir or beneficiary could be accepted only by an ALJ or Indian probate judge. There does not appear to be any basis for this distinction, which has caused numerous practical problems for interested parties and deciding officials. There is also no need for the distinction, since under section 4.202(b)(1) a probable heir or beneficiary can request a formal hearing before an ALJ or Indian probate judge if he or she prefers.

Two new criteria have been added to section 4.202(b) to cover issues that are handled only by ALJs and Indian probate judges: determinations of nationality, citizenship, or status affecting the character of land titles under section 4.206(a)(2), and tribal purchases of a decedent's interest under section 4.300 *et seq.*

Section 4.206 Determinations of Nationality or Citizenship and Status Affecting Character of Land Titles

This section has been divided into paragraphs to distinguish determinations of Indian or non-Indian status from determinations of nationality or citizenship. Determinations of Indian or non-Indian status can be made by any deciding official, including an attorney decision maker, *see* former 25 CFR 15.311(4). Determinations of nationality or citizenship affecting the character of land titles, however, are more likely to turn on factual issues requiring an evidentiary hearing. Such cases have therefore been handled by an ALJ or Indian probate judge.

Section 4.211 Assignment to Deciding Official

This section is based on former 25 CFR 15.203; a table has been used for ease of reference. As noted previously, with the consolidation of attorney decision makers, ALJs, and Indian probate judges in OHA, BIA will be referring all completed probate packages to OHA, which will make the case assignments to particular deciding officials. Consistent with current practice, the cases will be divided into three categories: (a) Those that qualify for summary processing, (b) those that do not qualify for summary processing but do not require a formal hearing, and (c) those that require a formal hearing. Cases that fall into either of the first two categories will be assigned to an attorney decision maker, while cases that fall into the third category will be assigned to an ALJ or Indian probate judge.

Paragraph (d) has been added to provide flexibility in the event an attorney decision maker is not available to handle a case falling into either of the first two categories. In such event, the case could be assigned to an ALJ or Indian probate judge.

Section 4.212 Summary Process for Estate Containing Only Cash Assets of Less Than $5,000

This section is based on former 25 CFR 15.206. It provides for an expedited, informal process for estates that contain only trust cash assets of less than $5,000 and that do not require a formal hearing under section 4.202(b).

Section 4.213 Informal Process for Cases That Do Not Require a Formal Hearing

This section is based on former 25 CFR 15.301. It provides for an informal process for estates that contain trust cash assets of $5,000 of more or other trust property and that do not require a formal hearing under section 4.202(b).

Section 4.214 Written Decision of Attorney Decision Maker

This section is based on former 25 CFR 15.311. It specifies what the written decision of an attorney decision maker must contain, following an informal hearing held under section 4.212 or 4.213.

Section 4.215 De Novo Review Following Decision of Attorney Decision Maker

This section is based on former 25 CFR 15.401–.405 and former 43 CFR 4.243. As noted previously in connection with 25 CFR 15.303, this rule uses the term ''request for de novo review'' rather than ''appeal'' (as in the former regulations) to refer to a proceeding by an ALJ or Indian probate judge to review a probate case following the issuance of an attorney decision maker's decision under section 4.214.

Section 4.300 Authority and Scope

Paragraph (a) of this section has been converted to a table for ease of reference.

III. Procedural Requirements

A. Determination To Issue Direct Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rulemaking because the revisions being adopted pertain solely to matters of agency organization, procedure, and practice. They therefore satisfy the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A). This rule merely transfers regulatory provisions governing the processing of certain Indian probate cases from 25 CFR part 15 to 43 CFR part 4, to reflect the consolidation of Indian probate adjudication in OHA, and makes other minor changes to the Department's procedural regulations to assure consistency and efficiency in adjudications after the consolidation.

B. Determination To Make Rule Immediately Effective

The Department has determined that there is good cause to waive the requirement of publication 30 days in advance of the rule's effective date under 5 U.S.C. 553(d). Consolidating the Indian probate adjudication function in one organization will lead to increased efficiency, improved service to Indian heirs and beneficiaries, and greater consistency in probate decisions. Delaying the consolidation for 30 days until the rule became effective would hamper the administrative process while providing no benefit to the public. And implementing the consolidation while waiting for the rule to become effective in 30 days would result in a regulatory gap during which the attorney decision makers, having been transferred to OHA, would have no authority to process their cases. Accordingly, this rule is being made effective on the date of publication in the **Federal Register** for good cause shown under 5 U.S.C. 553(d)(3).

C. Review under Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Department must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''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.

This rule merely transfers regulatory provisions governing the processing of certain Indian probate cases from 25 CFR part 15 to 43 CFR part 4, to reflect the consolidation of Indian probate adjudication in OHA, and makes other minor changes to the Department's procedural regulations. Accordingly, it has been determined that this rule is not a ''significant regulatory action'' from an economic standpoint and that it does not otherwise create any inconsistencies or budgetary impacts on any other agency or federal program.

D. Review Under Executive Order 12988 (Civil Justice Reform)

With respect to both the review of existing regulations and the promulgation of new regulations, subsection 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review of new regulations, subsection 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulations (1) clearly specify the preemptive effect, if any; (2) clearly specify any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specify the retroactive effect, if any; (5) adequately define key terms; and (6) address other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Subsection 3(c) of Executive Order 12988 requires agencies to review new regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Office of the Solicitor has determined that this rule meets the relevant standards of Executive Order 12988.

E. Review Under the Regulatory Flexibility Act

This rule was also reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities.

This rule merely transfers regulatory provisions governing the processing of certain Indian probate cases from 25 CFR part 15 to 43 CFR part 4, to reflect the consolidation of Indian probate adjudication in OHA, and makes other minor changes to the Department's procedural regulations. Accordingly, the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities, and no

regulatory flexibility analysis is required.

F. Review Under the 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 Fairness Act of 1996:

(1) It will not have an annual effect on the economy of $100 million or more. The rule reflects the consolidation of existing probate adjudication functions in a single organization, which will increase administrative efficiency but will not affect the overall economy.

(2) This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The transfer of regulatory provisions governing the processing of certain Indian probate cases from 25 CFR part 15 to 43 CFR part 4 and the other minor procedural changes made by the rule will not result in any increase in costs or prices.

(3) This rule will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, nor on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The rule is limited to matters of agency organization, procedure, and practice.

G. Review Under the Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it applies to the conduct of agency administrative proceedings involving specific individuals and entities. 44 U.S.C. 3518(c); 5 CFR 1320.4(a)(2). An OMB form 83–1 is not required.

H. Review Under Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this rule may be of interest to tribes, there is no Federalism impact on the trust relationship or balance of power between the United States government and tribal governments. Therefore, in accordance with Executive Order 13132, the Department has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

I. Review Under the National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

J. Review Under the Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule merely transfers regulatory provisions governing the processing of certain Indian probate cases from 25 CFR part 15 to 43 CFR part 4, to reflect the consolidation of Indian probate adjudication in OHA, and makes other minor changes to the Department's procedural regulations. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

K. Review Under Executive Order 12630 (Takings)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not involve the taking of private property interests, and no takings implication assessment has been prepared.

L. Review Under Executive Order 13175 (Tribal Consultation)

During the period from November 2003 to March 2004, the Department held a series of consultation sessions with tribes around the country concerning its ''To-Be'' Trust Business Model, including the recommendation that all probate adjudication be consolidated in a single organization. The tribes were notified during the consultation sessions that the Department's Indian probate regulations in 25 CFR part 15 and 43 CFR part 4 would need to be revised to effectuate the consolidation. The general reaction to the recommendation, which this rule implements, was favorable. The Department has met its tribal consultation obligations under E.O. 13175.

M. Review Under Executive Order 13211 (Energy Impacts)

The Department has determined that this rule is not a ''significant energy action'' as defined in Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866 (as discussed above), nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

25 CFR Part 15

Estates, Indians-law.

43 CFR Part 4

Administrative practice and procedure, Estates, Hearing and appeal procedures, Indians-law.

Dated: February 11, 2005.

David W. Anderson,

Assistant Secretary—Indian Affairs.

Dated: February 17, 2005.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons set forth in the preamble, 25 CFR part 15 and 43 CFR part 4 are amended as follows:

TITLE 25—INDIAN AFFAIRS

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

■ 1. Revise part 15 of title 25 of the Code of Federal Regulations to read as follows:

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

Subpart A—Introduction

Sec.
15.1 What is the purpose of this part?
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more than one tribe, who prepares the package?

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15.301 What happens after BIA prepares the probate package?
15.302 What happens after the probate package is referred to OHA?
15.303 What happens after the probate decision is made?

Subpart E—Information and Records

15.401 How can I find out the status of a probate?
15.402 Who owns the records associated with this part?
15.403 How must records associated with this part be preserved?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410; 44 U.S.C. 3101 *et seq.*

Cross Reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five Civilized Tribes, see Title 25 Code of Federal Regulations, Part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to initiate the probate of the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by BIA, and how probates will be sent to the OHA for disposition.

§ 15.2 What terms do I need to know?

Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property and money. This term also means any office of a tribe that has contracted or compacted the BIA probate function under 25 U.S.C. 450f or 458cc.

ALJ means an administrative law judge with the Office of Hearings and Appeals (OHA) appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105.

Attorney decision maker means an attorney with OHA who conducts an informal hearing and renders a decision in any probate case that does not require a formal hearing and a decision by an ALJ or Indian probate judge.

Beneficiary means any individual who is designated in a decedent's will to receive trust or restricted property or money. The term includes both a devisee (someone who receives real property in a will) and a legatee (someone who receives personal property in a will).

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Codicil means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

Creditor means any individual or entity that submits a claim for payment from a decedent's estate.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Deciding official means an ALJ, Indian probate judge, or attorney decision maker.

Decision or *order* means a written document issued by a deciding official making determinations as to heirs, wills, beneficiaries, and creditors' claims, and ordering distribution of property and money.

Estate means the trust cash assets, restricted or trust lands, and other trust property owned by the decedent at the time of his or her death.

Form OHA–7 means a form used by OHA (or an automated database equivalent) to record data for heirship and family history and to provide information on any wills, trust and restricted property, adoptions, and names and addresses of all interested parties.

Formal hearing means a trial-type proceeding, conducted by an ALJ or Indian probate judge, in which evidence is obtained through the testimony of witnesses and the introduction of relevant documents.

Heir means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

IIM account means funds held in an individual Indian money (IIM) account by the Office of the Special Trustee for American Indians (OST) or by a tribe performing this function under a contract or compact.

Indian probate judge means an employee of OHA, other than an administrative law judge or attorney decision maker, to whom the Secretary has delegated authority to conduct hearings in probate cases in accordance with 43 CFR part 4, subpart D.

Informal hearing means a meeting convened by an attorney decision maker in which interested parties are asked to present relevant information on uncontested issues.

Interested party means any probable or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate means the decedent died without a valid will.

LTRO means the Land Titles and Records Office within BIA.

OHA means the Office of Hearings and Appeals, Department of the Interior.

OST means the Office of the Special Trustee for American Indians, Department of the Interior.

Probate means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of a decedent's estate is applied to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine beneficiaries;

(3) Determine whether claims against the estate will be paid from trust funds; and

(4) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities entitled by law to receive it.

Probate clerk means a BIA or tribal employee who is responsible for preparing a probate package.

Probate specialist means a BIA or tribal employee who is trained in Indian probate matters.

Restricted land means land the title to which is held by an individual Indian or a tribe and which can be alienated or encumbered by the owner only with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Secretary means the Secretary of the Interior or his or her authorized representative.

Testate means the decedent executed a valid will before his or her death.

Trust cash assets means the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.

Trust land means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

We or *us* means either an official of BIA or a tribe performing probate functions under a BIA contract or compact.

Will means a written testamentary document that was signed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

You or *I* means an interested party, as defined herein, with an interest in the decedent's trust estate unless a specific section says otherwise.

§ 15.3 Will the Secretary probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

§ 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (*see* subpart B of this part for details);

(b) We prepare a probate package that includes documents you send us (*see* subpart C of this part for details);

(c) We refer the completed probate package to OHA for assignment to a deciding official (*see* subpart D of this part for details); and

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account and we make the distribution (*see* subpart D of this part for details).

Subpart B—Starting the Probate Process

§ 15.101 How do I begin the BIA probate process?

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death.

(a) You should provide a certified copy of the death certificate, if one exists.

(b) If a death certificate does not exist, you should provide an affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that specifies what is known about the date and cause of the decedent's death. A copy of any supporting documents that may be available, such as an obituary or death notice or a church or court record, should be provided along with the affidavit.

§ 15.102 May I notify BIA of a death if I am not related to the decedent?

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

§ 15.103 When should BIA be notified of a death?

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

§ 15.104 What other documents does BIA need to prepare a probate package?

(a) You should provide us with the following documents and information before we can begin to process the probate package:

(1) Social Security number of the decedent;

(2) The birth certificate or other record of birth of the decedent, if available;

(3) The death certificate or other reliable evidence of death as required by § 15.101;

(4) A list of known creditors against the estate and their addresses;

(5) Current names and addresses of potential heirs and beneficiaries;

(6) Any statements renouncing an interest in the estate;

(7) Documents from a court of competent jurisdiction, including but not limited to:

(i) All marriage licenses of the decedent;

(ii) All divorce decrees of the decedent;

(iii) Adoption and guardianship records relevant to the decedent;

(iv) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(v) Any name changes; and

(vi) Any order requiring payment of child support;

(8) All originals or copies of wills and codicils, and any revocations; and

(9) Any additional documents you provide or that we request.

(b) You must inform us if any of the documents or information identified in this part are not available.

§ 15.105 Will BIA wait to begin the probate process until it is notified of the decedent's death?

No, we will not wait to begin the probate process until we are notified of the decedent's death. If we find out about the death of a person, and if the decedent meets the criteria in § 15.3, we will initiate the process to collect the necessary documentation. You should not assume that we will find out about a death. To assure timely distribution of the estate, you should notify us as provided in § 15.101.

§ 15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?

(a) You may ask BIA for up to $1,000 from the decedent's IIM account if:

(1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;

(2) You have an immediate need to pay for funeral arrangements before burial; and

(3) The decedent's IIM account contains more than $2,500 on the date of death.

(b) You must apply for assistance under paragraph (a) of this section and submit to BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to $1,000 that are necessary for the burial services, taking into consideration:

(1) The total amount in the account;

(2) The number of probable heirs or beneficiaries of whom we are aware;

(3) The amount of any claims against the account of which we are aware; and

(4) The availability of non-trust funds, and any other relevant factor.

(d) We will make payments directly to the providers of the services.

§ 15.107 Who prepares an Indian probate package?

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package in consultation with the probable heirs or beneficiaries who can be located.

§ 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate package?

Unless otherwise provided by Federal law, the BIA agency that has jurisdiction over the tribe with the strongest association with the decedent will serve as the home agency and will prepare the probate package if the decedent either:

(a) Was not an enrolled member of a tribe, but owns interests in trust or restricted property; or

(b) Was a member of more than one tribe.

Subpart C—Preparing the Probate Package

§ 15.201 What will BIA do with the documents that I provide?

Once we receive the documents that you provide us under § 15.104, the probate specialist or probate clerk will:

(a) Use the documents to prepare a probate package; and

(b) Consult with you and any other sources to obtain any additional information needed for a complete package.

§ 15.202 If the decedent owed me money, how do I file a claim against the estate?

(a) If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt. The statement must show the amount of the original debt and the remaining balance on the date of the decedent's death.

(b) The itemized statement must state whether you have filed a claim against the decedent's non-trust assets.

(c) We must receive your claim within 60 days from the date we received the verification of the decedent's death in § 15.101 to include the claim as part of the probate package.

§ 15.203 What must the complete probate package contain?

The complete probate package must contain all of the following:

(a) A certified copy of the death certificate, or if one does not exist, some other reliable evidence of death as required by § 15.101;

(b) A completed Form OHA–7, ''Data for Heirship Findings and Family History,'' certified by BIA, with the enrollment or other identifying number shown for each potential heir or beneficiary, if such number has been assigned;

(c) A certified inventory of trust or restricted real property;

(d) A statement describing all income generating activity;

(e) A copy of the decedent's IIM account ledger showing the balance of the account at the date of death and the balance of the account at the date of probate package submission;

(f) All original or certified copies of wills, codicils, and any revocations of wills or codicils;

(g) Any statements renouncing interest that have been submitted to the agency;

(h) Claims of creditors against the estate, date stamped to show when the agency received them;

(i) All documentation of payment of claims before the probate proceeding;

(j) All other documents required in § 15.104;

(k) Tribal options to purchase interests of a decedent;

(l) Affidavit of the probate clerk or probate specialist describing what efforts have been made to locate any missing probable heirs and beneficiaries; and

(m) Any other documentation that may be required at the time of probate proceedings.

Subpart D—Probate Processing and Distributions

§ 15.301 What happens after BIA prepares the probate package?

(a) After we have assembled all the documents required by § 15.203, a probate specialist will refer the case to OHA for assignment to a deciding official.

(b) At the same time the probate specialist refers the case to OHA, we will notify all interested parties of:

(1) The right of the probable heirs or beneficiaries to request a formal hearing before an ALJ or Indian probate judge;

(2) The identification of the probable legal heirs or the submission of an original or certified copy of a will or revocation and listed beneficiaries;

(3) Any known claims against the estate; and

(4) The address of the OHA office where the probate package has been sent.

(c) We will send the notice described in paragraph (b) of this section by regular mail. It will inform the probable heirs or beneficiaries that:

(1) They may ask OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available), or a decision based on documents in the probate package; and

(2) If they do not request a formal hearing, the probate case may be assigned to an attorney decision maker, who will convene an in-person informal hearing at a site convenient to most of the parties.

§ 15.302 What happens after the probate package is referred to OHA?

After OHA receives the probate package, it will assign the case to a deciding official, who will conduct the probate proceeding and issue a written decision or order in accordance with 43 CFR part 4, subpart D.

§ 15.303 What happens after the probate decision is made?

(a) We will not pay claims, transfer title to land, or distribute trust cash assets for 75 days after the final OHA decision or order is mailed to the interested parties.

(b) If an interested party files a timely request for de novo review, a request for rehearing, or an appeal in accordance with 43 CFR part 4, subpart D, we will not pay claims, transfer title to land, or distribute trust cash assets until the request or appeal is resolved.

(c) After 75 days, if no request for de novo review, request for rehearing, or appeal has been filed, or after any request or appeal has been resolved, the following actions will take place:

(1) The LTRO will change its land title records for the trust and restricted property in accordance with the final decision or order; and

(2) OST will pay claims and distribute the IIM account in accordance with the final decision or order.

Subpart E—Information and Records

§ 15.401 How can I find out the status of a probate?

You may request information about the status of an Indian probate from any BIA agency or regional office.

§ 15.402 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to Public Law 93–638 as amended; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records are the property of the tribe if they are:

(1) Not covered by paragraph (a) of this section; and

(2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

§ 15.403 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that has records identified in § 15.402(a):

(1) Must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33; and

(2) Is subject to inspection by the Secretary and the Archivist of the United States with respect to these records and related records management practices and safeguards required under the Federal Records Act.

(b) A tribe or tribal organization should preserve the records identified in § 15.402(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. Chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

TITLE 43—PUBLIC LANDS: INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

■ 2. Revise the authority citation to part 4 to read as follows:

Authority: 5 U.S.C. 301; 43 U.S.C. 1201.

■ 3. Revise paragraph (c) of § 4.27 to read as follows:

§ 4.27 Standards of conduct.

* * * * *

(c) *Disqualification.* (1) An Office of Hearings and Appeals deciding official must withdraw from a case if circumstances exist that would disqualify a judge in such circumstances under the recognized canons of judicial ethics.

(2) A party may file a motion seeking the disqualification of a deciding official, setting forth in detail the circumstances that the party believes require disqualification. Any supporting facts must be established by affidavit or other sufficient evidence. A copy of the motion should be sent to the Director.

(3) The head of the appropriate unit within the Office or the Director may decide whether disqualification is required if the deciding official does not withdraw under paragraph (c)(1) of this section or in response to a motion under paragraph (c)(2) of this section.

(4) For purposes of this section, ''deciding official'' includes an attorney decision maker or Indian probate judge as defined in § 4.201, an administrative law judge, an administrative judge, or a member of any Board.

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

■ 4. Revise the authority citation for subpart D to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410; Pub. L. 99–264, 100 Stat. 61, as amended.

■ 5. Revise §§ 4.200 and the undesignated center heading to read as follows:

Scope of Subpart; Definitions

§ 4.200 How to use this subpart.

(a) The following table is a guide to the contents of this subpart by subject matter.

For provisions relating to . . .	consult . . .
(1) All proceedings in subpart D	§§ 4.200 and 4.201.
(2) The probate of trust estates of Indians who die possessed of trust property.	§§ 4.202 through 4.282 and 4.310 through 4.323.
(i) Probate matters generally	§§ 4.202, 4.206, 4.208, 4.210, 4.211, 4.250 through 4.270, 4.273 through 4.282, and 4.310 through 4.323.
(ii) Informal probate proceedings before an attorney decision maker	§§ 4.212 through 4.215.
(iii) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 4.203 through 4.205, 4.207, 4.216 through 4.242, 4.271, and 4.272.
(3) Tribal purchase of certain property interests of decedents under special laws applicable to particular tribes.	§§ 4.300 through 4.308.
(4) Appeals to the Board of Indian Appeals from actions or decisions of BIA.	§§ 4.330 through 4.340.
(5) Determinations under the White Earth Reservation Land Settlement Act.	§§ 4.350 through 4.357.

(b)(1) Except as provided in paragraph (b)(2) of this section, the regulations referred to in paragraph (a)(2) of this section do not apply to the restricted property of deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and members of any tribe organized under 25 U.S.C. 476, to the extent that the constitution, by-laws or charter of such tribe may be inconsistent with this subpart.

(2) The regulations referred to in paragraph (a)(2) of this section do apply to trust or restricted property inherited by such deceased Indian or member of such tribe from someone who was a member of a tribe not included in paragraph (b)(1) of this section.

(c) Except as limited by the provisions in this subpart, the rules in subparts A and B of this part apply to these proceedings.

■ 6. Revise §§ 4.201, 4.202, 4.203, 4.204, 4.205, 4.206, 4.207, and 4.208 to read as follows:

§ 4.201 Definitions.

Administrative law judge means an administrative law judge with the Office of Hearings and Appeals (OHA) appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105.

Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property and money. This term also means any office of a tribe that has contracted or compacted BIA probate function under 25 U.S.C. 450f or 458cc.

Attorney decision maker means an attorney with OHA who conducts an informal hearing and renders a decision in any probate case that does not require a formal hearing and a decision by an administrative law judge or Indian probate judge.

Beneficiary means any individual who is designated in a decedent's will to receive trust or restricted property or money. The term includes both a devisee (someone who receives real property in a will) and a legatee (someone who receives personal property in a will).

Bequeath means to give personal property to someone in a will.

Bequest (or *legacy*) means a gift of personal property in a will.

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Board means the Board of Indian Appeals within OHA, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by OHA deciding officials on petitions for rehearing or reopening, and

allowance of attorney fees, and from actions of BIA officials as provided in § 4.1(b)(2).

Child or *children* includes any child adopted by the decedent.

Codicil means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

Creditor means any individual or entity that submits a claim for payment from a decedent's estate.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Deciding official means an administrative law judge, Indian probate judge, or attorney decision maker.

Decision or *order* means a written document issued by a deciding official making determinations as to heirs, wills, beneficiaries, and creditors' claims, and ordering distribution of property and money.

De novo review means a process in which an administrative law judge or Indian probate judge will, without regard to the decision previously issued in the case by an attorney decision maker:

(1) Take a fresh look at a probate case;

(2) Conduct a formal hearing as necessary or appropriate; and

(3) Issue a decision.

Department means the Department of the Interior.

Devise when used as a verb means to give real property to someone in a will. When used as a noun, it means a gift of real property in a will.

Estate means the trust cash assets, restricted or trust lands, and other trust property owned by the decedent at the time of his or her death.

Formal hearing means a trial-type proceeding, conducted by an administrative law judge or Indian probate judge, in which interested parties present evidence through the testimony of witnesses and the introduction of relevant documents.

Heir means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

IIM account means funds held in an individual Indian money (IIM) account by the Office of the Special Trustee for American Indians (OST) or by a tribe performing this function under a contract or compact.

Indian probate judge means an employee of OHA, other than an administrative law judge or attorney decision maker, to whom the Secretary has delegated authority to conduct hearings in probate cases.

Informal hearing means a meeting convened by an attorney decision maker in which interested parties present relevant information on uncontested issues.

Interested party means:

(1) Any probable or actual heir;

(2) Any beneficiary under a will;

(3) Any party asserting a claim against a deceased Indian's estate; and

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate means the decedent died without a valid will.

LTRO means the Land Titles and Records Office within BIA.

Minor means an individual who has not reached the age of majority as defined by the applicable tribal or state law.

OHA means the Office of Hearings and Appeals, Department of the Interior.

OST means the Office of the Special Trustee for American Indians, Department of the Interior.

Probate means the legal process by which applicable tribal law, State law, or Federal law that affects the distribution of a decedent's estate is applied to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine beneficiaries;

(3) Determine whether claims against the estate will be paid from trust funds; and

(4) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities entitled by law to receive it.

Probate specialist means a BIA or tribal employee who is trained in Indian probate matters.

Restricted property means real or personal property held by an Indian that he or she cannot alienate or encumber without the consent of the Secretary. In this subpart, restricted property is treated as if it were trust property. Except with respect to § 4.200(b)(1), the term ''restricted property'' as used in this subpart does not include the restricted lands of the Five Civilized Tribes or Osage Tribe of Indians.

Secretary means the Secretary of the Interior or an authorized representative.

Solicitor means the Solicitor of the Department of the Interior or an authorized representative.

Superintendent means a BIA Superintendent or other BIA official having jurisdiction over an estate, including an area field representative or one holding equivalent authority.

Testate means the decedent executed a valid will before his or her death.

Trust cash assets means the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.

Trust property means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

Will or *last will and testament* means a written testamentary document that was signed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

Determination of Heirs; Approval of Wills; Settlement of Indian Trust Estates

§ 4.202 General authority of deciding officials.

(a) An attorney decision maker may conduct an informal hearing and render a decision in any probate case that does not require a formal hearing and a decision by an administrative law judge or Indian probate judge.

(b) Cases that require a formal hearing and a decision by an administrative law judge or Indian probate judge are those that meet one or more of the following criteria:

(1) A probable heir or beneficiary requests a formal hearing at any time before the attorney decision maker renders a decision;

(2) A will exists that is complex, ambiguous, of questionable validity, or contested;

(3) An interested party contests a claim from a creditor or family member;

(4) Questions exist about family relationships, including questions about adoption of an heir or paternity;

(5) The case involves a minor heir whose rights might be jeopardized;

(6) Prior probate orders conflict on an issue relevant to the case;

(7) The jurisdiction of any court that issued an order that has been used as a supporting document in the case is challenged;

(8) Questions exist concerning the decedent's domicile;

(9) There are other problems with the case requiring an evidentiary hearing;

(10) The case requires a determination as to a nonexistent person or other allotment irregularity under § 4.203;

(11) The case involves a presumption of death under § 4.204;

(12) The case requires a determination of escheat under § 4.205;

(13) The case requires a determination of nationality, citizenship, or status affecting the character of land titles under § 4.206(a)(2);

(14) The interested parties reach a settlement agreement under § 4.207; or

(15) The case involves a tribal purchase of a decedent's interest under § 4.300 *et seq.*

(c) For probate cases within their respective jurisdictions, deciding officials will:

(1) Determine the heirs of any Indian who dies intestate possessed of trust property;

(2) Approve or disapprove the will of a deceased Indian disposing of trust property;

(3) Accept or reject any full or partial renunciation of interest in both testate and intestate proceedings;

(4) Allow or disallow creditors' claims against the estate of a deceased Indian; and

(5) Decree the distribution of trust property to heirs and beneficiaries.

(d) ''Distribution'' under paragraph (c)(5) of this section includes partial distribution to known heirs or beneficiaries where one or more potential heirs or beneficiaries are missing but not presumed dead. In these cases, the deciding official will first attribute to and set aside for the missing person or persons the share or shares that the missing person or persons would be entitled to if living.

(e) In any case in which de novo review is sought following a decision by an attorney decision maker under § 4.215, an administrative law judge or Indian probate judge will review the case de novo, hold hearings as necessary or appropriate, and issue a decision.

§ 4.203 Determination as to nonexistent persons and other irregularities of allotments.

(a) An administrative law judge or Indian probate judge will hear and determine:

(1) Whether trust patents covering allotments of land were issued to nonexistent persons; and

(2) Whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The administrative law judge or Indian probate judge will proceed as provided in § 4.202(c) if he or she determines under paragraph (a) of this section that:

(1) A trust patent was issued to an existing person, or separate persons received the allotments under consideration; and

(2) Any such person is deceased without having had his or her estate probated.

(c) The administrative law judge or Indian probate judge will issue a decision setting forth his or her determination, and will provide notice thereof to interested parties under § 4.240(b), if he or she determines under paragraph (a) of this section that either:

(1) A person did not exist; or

(2) More than one allotment was issued to the same person.

§ 4.204 Presumption of death.

(a) An administrative law judge or Indian probate judge will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an administrative law judge or Indian probate judge determines that an Indian person possessed of trust property is to be presumed dead, the administrative law judge or Indian probate judge will proceed as provided in § 4.202(c).

§ 4.205 Escheat.

An administrative law judge or Indian probate judge will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a; or

(b) With respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

§ 4.206 Determinations of nationality, citizenship, or status affecting character of land titles.

(a) In cases where the right and duty of the Government to hold property in trust depends thereon:

(1) A deciding official will determine the Indian or non-Indian status of heirs or beneficiaries; and

(2) An administrative law judge or Indian probate judge will determine the nationality or citizenship of heirs or beneficiaries, or whether Indian heirs or beneficiaries of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated.

(b) Determinations under paragraph (a) of this section will be made either in current probate proceedings or in completed estates after reopening such estates under, but without regard to the 3-year limit in, § 4.242.

§ 4.207 Settlement agreement.

(a) An administrative law judge or Indian probate judge may approve a settlement agreement between interested parties resolving any issue in the probate proceeding if he or she finds that:

(1) All parties to the agreement are fully advised as to all material facts;

(2) All parties to the agreement are fully cognizant of the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement agreement, the administrative law judge or Indian probate judge may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers must supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) If the administrative law judge or Indian probate judge approves the settlement agreement under paragraph (a) of this section, he or she will issue a final order approving the settlement agreement and distributing the estate in accordance with its provisions. This order will be construed as any other order of distribution establishing title in heirs and beneficiaries and will not be construed as a partition or sale transaction within the provisions of 25 CFR part 152.

(1) If land titles are to be transferred, the necessary deeds must be prepared and executed at the earliest possible date.

(2) Upon failure or refusal of any interested party to execute and deliver any deed necessary to accomplish the settlement, the administrative law judge or Indian probate judge will settle the issues and enter an order as if no agreement had been attempted.

(d) Administrative law judges or Indian probate judges are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

§ 4.208 Renunciation of interest.

(a) Any probable heir or beneficiary, not a minor, may wholly or partially renounce intestate succession or a devise or bequest of trust or restricted property, including the retention of a life estate. To do this, the probable heir or beneficiary must file a signed and acknowledged declaration of renunciation with the deciding official before entry of the final order.

(b) No interest in property renounced under paragraph (a) of this section is considered to have vested in the heir or beneficiary, and the renunciation is not considered a transfer by gift of the property renounced. Rather, the renounced property passes as if the

person renouncing the interest had predeceased the decedent.

(c) A renunciation filed in accordance with this section will be considered accepted when implemented in an order by a deciding official and will be irrevocable thereafter.

(d) All disclaimers or renunciations previously filed with and implemented in an order by a deciding official are hereby ratified as valid and effective.

■ 7. Revise §§ 4.210 and 4.211 to read as follows:

Commencement of Probate Proceedings

§ 4.210 Commencement of probate.

(a) The probate of a trust estate before a deciding official will commence when the probate specialist files with OHA all information shown in the records relative to the family of the deceased and his or her property.

(1) The information must include the complete probate package described in 25 CFR 15.203 and any other relevant information.

(2) If OHA determines that the probate package is not complete, it may request the missing information from BIA or return the case to BIA for further processing.

(b) The agency must promptly transmit to the deciding official any creditor's or other claims that are received after the case is transmitted to OHA, for a determination of their timeliness, validity, priority, and allowance under §§ 4.250 and 4.251.

§ 4.211 Assignment to deciding official.

Within 30 days after OHA receives the complete probate package, OHA will assign the case to an attorney decision maker, administrative law judge, or Indian probate judge, as shown in the following table:

The case will be assigned to . . .	for . . .	if . . .	and if . . .
(a) An attorney decision maker	summary processing under §§ 4.212 and 4.214.	as of the date of the decedent's death, the estate contained only trust cash assets of less than $5,000.	the case meets the other criteria in § 4.212(a).
(b) An attorney decision maker	an informal hearing and decision under §§ 4.213 and 4.214.	as of the date of the decedent's death, the estate contained trust cash assets of $5,000 or more or other trust property.	the case meets the other criteria in § 4.213(a).
(c) An administrative law judge or Indian probate judge.	a formal hearing and decision under §§ 4.216 through 4.240.	the case does not meet the criteria in paragraphs (a) or (b) of this section.	
(d) An administrative law judge or Indian probate judge.	Summary or informal processing under §§ 4.212 through 4.214.	no attorney decision maker is available to handle a case under paragraphs (a) or (b) of this section.	

■ 8. Revise § 4.212 and add an undesignated center heading to read as follows:

Summary and Informal Probate Proceedings

§ 4.212 Summary process for estates containing only trust cash estates of less than $5,000.

(a) A decedent's estate may be processed summarily by an attorney decision maker if:

(1) The estate contained only trust cash assets of less than $5,000 as of the date of the decedent's death;

(2) The case does not meet the criteria in § 4.202(b);

(3) Federal law or a tribal inheritance code approved by the Secretary does not provide otherwise.

(b) Any interested party may request a formal hearing before an administrative law judge or Indian probate judge to determine the proper distribution of the trust cash assets. This request for a formal hearing, if desired, must be made before the attorney decision maker renders a decision. Upon receiving a request for a formal hearing, OHA will assign or transfer the case to an administrative law judge or Indian probate judge.

(c) Within 60 days after OHA receives the complete probate package, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker to whom the case has been assigned will:

(1) Provide notice equivalent to that required for a formal hearing under §§ 4.216–4.217;

(2) Assemble the probable heirs and beneficiaries; and

(3) Hold an informal hearing to determine the distribution of the trust cash assets.

(d) The attorney decision maker may schedule a supplemental informal hearing as necessary, in accordance with § 4.235.

(e) Within 30 days after the informal hearing, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker will issue a written order in accordance with § 4.214.

(f) Any interested party may seek de novo review of the case following the decision of the attorney decision maker in accordance with § 4.215.

(g) If de novo review has not been sought within 60 days of the date of the written order, the attorney decision maker must submit:

(1) The complete original record to the LTRO;

(2) A complete duplicate copy of the record to the agency that prepared the probate package; and

(3) A copy of any relevant portions of the record to any other affected agency.

■ 9. Add §§ 4.213, 4.214, and 4.215 to read as follows:

§ 4.213 Informal process for cases that do not require a formal hearing.

(a) A decedent's estate may be processed informally by an attorney decision maker if:

(1) The estate contained trust cash assets of $5,000 or more as of the date of the decedent's death or contained other trust property;

(2) The case does not meet the criteria in § 4.202(b);

(3) Federal law or a tribal inheritance code approved by the Secretary does not provide otherwise.

(b) Any interested party may request a formal hearing before an administrative law judge or Indian probate judge to determine the proper distribution of the estate. This request for a formal hearing, if desired, must be made before the attorney decision maker

renders a decision. Upon receiving a request for a formal hearing, OHA will assign or transfer the case to an administrative law judge or Indian probate judge.

(c) Within 120 days after OHA receives the complete probate package, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker to whom the case has been assigned will:

(1) Provide notice equivalent to that required for a formal hearing under §§ 4.216–4.217;

(2) Assemble the probable heirs and beneficiaries; and

(3) Hold an informal hearing to determine the distribution of the trust assets.

(d) The attorney decision maker may schedule a supplemental informal hearing as necessary, in accordance with § 4.235.

(e) Within 60 days after the informal hearing, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker will issue a written order in accordance with § 4.214.

(f) Any interested party may seek de novo review of the case following the decision of the attorney decision maker in accordance with § 4.215.

(g) If de novo review has not been sought within 60 days of the date of the written order, the attorney decision maker must submit:

(1) The complete original record to the LTRO;

(2) A complete duplicate copy of the record to the agency that prepared the probate package; and

(3) A copy of any relevant portions of the record to any other affected agency.

§ 4.214 Written decision of attorney decision maker.

Following the informal hearing in § 4.212 or 4.213, the attorney decision maker will issue a written decision that:

(a) In all cases, lists the names, identifying numbers as assigned by BIA, birth dates, relationships to the decedent, and shares of the heirs, or finds that the decedent died leaving no legal heirs, and provides citations to the law of descent and distribution in accordance with which the decision is made;

(b) In testate cases, approves or disapproves a will, interprets provisions of the approved will, provides the names, identifying numbers as assigned by BIA, and relationships of the beneficiaries to the decedent, and describes the property each beneficiary is to receive;

(c) Allows or disallows claims against the estate in accordance with §§ 4.250–4.251, and orders the amount of payment for all approved claims;

(d) States whether the heirs or beneficiaries are Indian or non-Indian;

(e) Determines any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs;

(f) Attaches a certified copy of the inventory of trust or restricted lands, if any; and

(g) Advises all interested parties of their right to seek de novo review in accordance with § 4.215, and that, if they fail to do so, the decision of the attorney decision maker will become final upon expiration of the 60-day period provided in § 4.215(c).

§ 4.215 De novo review following decision of attorney decision maker.

(a) Any interested party who is adversely affected by a written decision of an attorney decision maker under § 4.214 may seek de novo review of the case by an administrative law judge or Indian probate judge by filing a request with the attorney decision maker.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

(1) The name of the decedent;

(2) A description of the appellant's relationship to the decedent;

(3) An explanation of how the appellant is adversely affected by the decision of the attorney decision maker; and

(4) An explanation of what errors the appellant believes the attorney decision maker made.

(c) The request for de novo review by an administrative law judge or Indian probate judge must be sent or delivered to the attorney decision maker within 60 days after the date that appears on the decision. If the request is mailed, it must be postmarked within 60 days after the date of the decision.

(d) After the 60-day period has expired, an interested party who is adversely affected by a written decision of an attorney decision maker under § 4.214 may file with the attorney decision maker a request for de novo review by an administrative law judge or Indian probate judge for one or more of the following reasons:

(1) The party did not receive notice of the probate;

(2) The party obtained new evidence or information after the decision was made; or

(3) The party has evidence that was known at the time of the probate proceeding but was not included in the probate package.

(e) Within 10 days of receiving the request for de novo review, the attorney decision maker will notify the Superintendent and all other interested parties of the request, and OHA will assign the case to an administrative law judge or Indian probate judge.

(f) The administrative law judge or Indian probate judge will review the merits of the case de novo, conduct a formal hearing as necessary or appropriate pursuant to the regulations in this subpart, and issue a new decision in accordance with § 4.240.

■ 10. Add § 4.216 and two undesignated center headings to read as follows:

Formal Probate Proceedings

Notice

§ 4.216 Notice.

(a) Before conducting a formal hearing to determine the heirs of a deceased Indian or probate his or her will, the administrative law judge or Indian probate judge must cause notice of the time and place of the hearing to be posted.

(1) The notice must be posted at least 20 days before the hearing date in five or more conspicuous places in the vicinity of the designated place of hearing.

(2) The administrative law judge or Indian probate judge may cause postings in such other places and reservations as he or she deems appropriate.

(3) A certificate showing the date and place of posting must be signed by the person or official who performs the act.

(b) The administrative law judge or Indian probate judge must serve or cause to be served a copy of the notice on each interested party known to the administrative law judge or Indian probate judge and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his or her last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The administrative law judge or Indian probate judge must cause a certificate, as to the date and manner of the mailing, to be made on the record copy of the notice.

(c) All interested parties, known and unknown, including creditors, will be bound by the decision based on the hearing if they lived near any place of posting during the posting period, whether or not they had actual notice of the hearing. With respect to interested parties not living near the place of

posting, a rebuttable presumption of actual notice will arise upon the mailing of the notice at a reasonable time before the hearing, unless the notice is returned by the postal service to the office of the administrative law judge or Indian probate judge unclaimed by the addressee.

(d) When a record reveals that a tribe has a statutory option to purchase interests of a decedent:

(1) The administrative law judge or Indian probate judge must notify the tribe of the pendency of a proceeding; and

(2) The certificate of mailing of notice of probate hearing or of a final decision in probate to the tribe at its record address will be conclusive evidence that the tribe had notice of the decedent's death and of the probate proceedings.

■ 11. Add § 4.217 to read as follows:

§ 4.217 Contents of notice.

(a) In the notice of a formal hearing, the administrative law judge or Indian probate judge must:

(1) Specify that, at the stated time and place, the administrative law judge or Indian probate judge will take testimony to determine the heirs of the decedent (naming him or her) and, if a will is offered for probate, testimony as to the validity of the will (describing it by date);

(2) Name all known probable heirs of the decedent, and, if a will is offered for probate, the beneficiaries under the will and the attesting witnesses to the will;

(3) Cite this subpart as the authority and jurisdiction for holding the hearing;

(4) Inform all persons having an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing or their rights may be lost by default; and

(5) State that the hearing may be continued to another time and place.

(b) A continuance may be announced either at the original hearing by the administrative law judge or Indian probate judge or by an appropriate notice posted at the announced place of hearing on or before the announced hearing date and hour.

■ 12. Revise §§ 4.220, 4.221, 4.222, 4.223, 4.224, and 4.225 to read as follows:

Depositions, Discovery, and Prehearing Conference

§ 4.220 Production of documents for inspection and copying.

(a) An interested party may make a written demand to produce documents for inspection and copying or photographing. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the formal hearing;

(2) May be made upon any other party to the proceeding or upon a custodian of records on Indians or their trust property;

(3) Must be made in writing, and a copy must be filed with the administrative law judge or Indian probate judge; and

(4) May demand any documents, papers, records, letters, photographs, or other tangible things that are:

(i) Relevant to the issues;

(ii) In the other party's or custodian's possession, custody, or control; and

(iii) Not privileged.

(b) Upon failure of prompt compliance, the administrative law judge or Indian probate judge may issue an appropriate order upon a petition filed by the requesting party.

(c) On his or her own motion, the administrative law judge or Indian probate judge may issue an order to any interested party or custodian of records for the production of material or information that is relevant to the issues and not privileged. The administrative law judge or Indian probate judge may do this after notifying all parties at any time before closing the record.

(d) Custodians of official records will furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control of such records.

§ 4.221 Depositions.

(a) *Stipulation.* Depositions in connection with a formal hearing may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When an interested party files a written application, the administrative law judge or Indian probate judge may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a formal hearing. The application must be in writing and must set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of the person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the application; and

(4) The reasons why the deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application, the administrative law judge or Indian probate judge determines that the deposition should be taken, he or she will order its taking. The order must be served upon all interested parties and must state:

(1) The name of the deponent;

(2) The time and place of the examination, which must be at least 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent must appear before the administrative law judge or Indian probate judge or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent must be examined under oath or affirmation and must be subject to cross-examination. The deponent's testimony must be recorded by the officer or someone in the officer's presence. An applicant who requests the taking of a person's deposition must make his or her own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* (1) When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and must be read to or by him or her, unless examination and reading are waived by the deponent or by all other interested parties.

(2) Any changes in form or substance that the deponent desires to make must be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them.

(3) The deposition must then be signed by the deponent, unless the interested parties by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign.

(4) If the deposition is not signed by the deponent, the officer must sign it and state on the record the fact of the waiver, the illness or absence of the deponent, or the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as fully as though signed, unless the administrative law judge or Indian probate judge holds that the reason given for refusal to sign requires rejection of the deposition in whole or in part.

(g) *Certificates by officer.* The officer must certify on the deposition that the deponent was duly sworn by the officer

and that the deposition is a true record of the deponent's testimony. The officer must then securely seal the deposition, together with two copies thereof, in an envelope and must personally deliver or mail the same by certified or registered mail to the administrative law judge or Indian probate judge.

(h) *Use of depositions.* (1) A deposition ordered and taken in accordance with the provisions of this section may be used in a hearing if the administrative law judge or Indian probate judge finds that:

(i) The witness is absent;

(ii) The witness's presence cannot be readily obtained;

(iii) The evidence is otherwise admissible; and

(iv) Circumstances make it desirable in the interest of fairness to allow the deposition to be used.

(2) If the interested party on whose application a deposition was taken refuses to offer the deposition, or any part thereof, in evidence, any other interested party or the administrative law judge or Indian probate judge may introduce the deposition or any portion thereof on which he or she wishes to rely.

§ 4.222 Written interrogatories; admission of facts and documents.

(a) An interested party may serve upon any other interested party written interrogatories and requests for admission of facts and documents. The interested party may do this only if:

(1) The interrogatories and requests are served in sufficient time to permit answers to be filed before the hearing;

(2) A copy of the interrogatories and requests is filed with the administrative law judge or Indian probate judge; and

(3) The interrogatories and requests are drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing.

(b) A party receiving interrogatories or requests served under paragraph (a) of this section must:

(1) Serve answers upon the requesting party within 30 days from the date of service of the interrogatories or requests, or within another deadline agreed upon by the parties or prescribed by the administrative law judge or Indian probate judge; and

(2) File a copy of the answers with the administrative law judge or Indian probate judge.

(c) Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

§ 4.223 Objections to and limitations on production of documents, depositions, and interrogatories.

The administrative law judge or Indian probate judge may limit the time, place, and scope of discovery under §§ 4.220, 4.221, and 4.222. The administrative law judge or Indian probate judge may do this:

(a) Upon timely motion by any interested party, if that party also gives proper notice and shows good cause; or

(b) Upon his or her own motion if a party's dilatory tactics or unreasonable demands will delay the orderly progress of the proceeding or cause unacceptable hardship to a party or witness.

§ 4.224 Failure to comply with discovery.

(a) If a party fails to comply with discovery under §§ 4.220 through 4.223, without showing a satisfactory excuse or explanation, the administrative law judge or Indian probate judge may:

(1) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other interested party or in accordance with other evidence available to the administrative law judge or Indian probate judge; or

(2) Make such other ruling as the administrative law judge or Indian probate judge determines just and proper.

(b) For purposes of paragraph (a) of this section, failure to comply with discovery includes failure to:

(1) Comply with a request for the production of a document under § 4.220;

(2) Appear for examination under § 4.221;

(3) Respond to interrogatories or requests for admissions under § 4.222; or

(4) Comply with an order of the administrative law judge or Indian probate judge issued under § 4.223.

§ 4.225 Prehearing conference.

Before a formal hearing, the administrative law judge or Indian probate judge may, upon his or her own motion or upon the request of any interested party, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

■ 13. Revise § 4.230 and the undesignated center heading to read as follows:

Formal Hearings

§ 4.230 Authority and duties of the administrative law judge or Indian probate judge.

(a) The authority of the administrative law judge or Indian probate judge in all formal hearings in probate proceedings includes, but is not limited to authority:

(1) To administer oaths and affirmations;

(2) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his or her own initiative or within his or her discretion upon the request of any interested party, to any person whose testimony he or she believes to be material to a hearing;

(3) To permit any interested party to cross-examine any witness;

(4) To appoint a guardian ad litem to represent any minor or incompetent interested party at hearings;

(5) To rule upon offers of proof and receive evidence;

(6) To take and cause depositions to be taken and to determine their scope; and

(7) To otherwise regulate the course of the hearing and the conduct of witnesses, interested parties, and attorneys at law appearing therein.

(b) Upon the failure or refusal of any person upon whom a subpoena has been served to appear at a hearing or to testify, the administrative law judge or Indian probate judge may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness.

■ 14. Revise §§ 4.231, 4.232, 4.233, 4.234, 4.235, and 4.236 to read as follows:

§ 4.231 Formal hearings.

(a) All testimony in formal Indian probate hearings must be under oath and must be taken in public, except in circumstances that, in the opinion of the administrative law judge or Indian probate judge, justify all but interested parties to be excluded from the hearing.

(b) The proceedings of hearings must be recorded verbatim.

(c) The record must include a showing of the names of all interested parties and attorneys who attended such hearing.

§ 4.232 Evidence; form and admissibility.

(a) Interested parties may offer at a formal hearing such relevant evidence as they deem appropriate under the

generally accepted rules of evidence of the State in which the evidence is taken, subject to the administrative law judge's or Indian probate judge's supervision as to the extent and manner of presentation of such evidence.

(b) The administrative law judge or Indian probate judge may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence. The weight to be attached to evidence presented in any particular form is within the discretion of the administrative law judge or Indian probate judge, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the interested parties, may be used as evidence at the hearing.

(d) The administrative law judge or Indian probate judge may in any case require evidence in addition to that offered by the interested parties.

§ 4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in § 4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses.

(1) These affidavits must be made before an officer authorized to administer oaths, must be attached to the will, and must be in substantially the following form and content:

State of _____

County of _____ss.

I,_____, being first duly sworn, on oath, depose and say: That I am an _____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____; that on the _____ day of _____, 19____/20____, I requested _____ to prepare a will for me; that the attached will was prepared; that I requested _____ and_____ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses; that they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

_____

Testator/Testatrix

We, _____ and _____, each being first duly sworn, on oath, depose and state: That on the _____ day of _____, 19____/20____, _____, a member of the _____ Tribe of Indians of the State of _____, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us, and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

_____

Witness

_____

Witness

Subscribed and sworn to before me this _____ day of _____, 19____/20____, by _____ testator/testatrix, and by _____ and _____, attesting witnesses.

_____

_____

(Title)

(2) If uncontested, a self-proved will may be approved and distribution may be ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined.

(1) If none of the attesting witnesses resides near the place of hearing at the time appointed for proving the will, the administrative law judge or Indian probate judge may:

(i) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

(ii) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

(2) The provisions of § 4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

(a) Interested parties who desire a witness to testify or an interpreter to serve at a formal hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper.

(b) The administrative law judge or Indian probate judge may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts.

(c) In hardship situations, the administrative law judge or Indian probate judge may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment, the administrative law judge or Indian probate judge must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally.

(d) Costs of administration allowed against the estate under paragraphs (b) or (c) of this section will have a priority for payment greater than that for any creditor claims allowed. Upon receiving an order, the Superintendent must immediately initiate payment of these sums from the estate account, or if funds are insufficient, then out of funds as they are received in the estate account before closure of the estate, with the proviso that these costs must be paid in full with a later allocation against the interest of a party, if the administrative law judge or Indian probate judge has so ordered.

§ 4.235 Supplemental hearings.

After the matter has been submitted but before the time the deciding official has rendered his or her decision, the deciding official may upon his or her own motion or upon motion of any interested party schedule a supplemental hearing if he or she deems it necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all interested parties in the manner provided in § 4.216. Where the need for such supplemental hearing becomes apparent during any hearing, the deciding official may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event, the records must clearly show who was present at the time of the announcement.

§ 4.236 Record.

(a) After the completion of the formal hearing, the administrative law judge or

Indian probate judge will make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including any transcript made of the testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and valuations of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship findings and family history;

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the administrative law judge or Indian probate judge.

(b) The administrative law judge or Indian probate judge must lodge the original record with the designated LTRO in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record must also be furnished to the Superintendents of other affected agencies. When a hearing transcript has not been prepared:

(1) The verbatim recording of the hearing must be retained in the office of the administrative law judge or Indian probate judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(2) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

■ 15. Revise the undesignated center heading and § 4.240 to read as follows:

Decisions in Formal Proceedings

§ 4.240 Decision of the administrative law judge or Indian probate judge and notice thereof.

(a) The administrative law judge or Indian probate judge must decide the issues of fact and law involved in any formal proceedings and must incorporate the following in his or her decision:

(1) In all cases, the names, identifying numbers as assigned by BIA, birth dates, relationships to the decedent, and shares of heirs, with citations to the law of descent and distribution in accordance with which the decision is made, or the fact that the decedent died leaving no legal heirs;

(2) In testate cases, approval or disapproval of the will with construction of its provisions, and the names, identifying numbers as assigned by BIA, and relationships to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or beneficiaries are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision; and

(5) A determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

(b) When the administrative law judge or Indian probate judge issues a decision, he or she must:

(1) Issue a notice of the decision to all parties who have or claim any interest in the estate; and

(2) Must mail a copy of the notice, together with a copy of the decision, to the Superintendent and to each interested party simultaneously.

(c) The decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241.

■ 16. Revise §§ 4.241 and 4.242 to read as follows:

§ 4.241 Rehearing.

(a) Any person aggrieved by the decision of the administrative law judge or Indian probate judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the administrative law judge or Indian probate judge a written petition for rehearing.

(1) The petition must:

(i) Be under oath; and

(ii) State specifically and concisely the grounds on which it is based.

(2) If the petition is based on newly-discovered evidence, it must:

(i) Be accompanied by affidavits or declarations of witnesses stating fully what the new testimony is to be; and

(ii) State justifiable reasons for the failure to discover and present that evidence, tendered as new, at the formal hearings held before the issuance of the decision.

(b) The administrative law judge or Indian probate judge, upon receiving a petition for rehearing, must promptly forward a copy to the Superintendent. The Superintendent must not initiate payment of claims or distribute the estate while such petition is pending, unless otherwise directed by the administrative law judge or Indian probate judge.

(c) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative law judge or Indian probate judge will:

(1) Issue an order denying the petition and setting forth his or her reasons therefor; and

(2) Furnish copies of the order to the petitioner, the Superintendent, and the interested parties.

(d) If the petition appears to show merit, the administrative law judge or Indian probate judge must:

(1) Cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition; and

(3) Reconsider, with or without a hearing as he or she may determine, the issues raised in the petition; he or she may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(e) Upon entry of a final order, the administrative law judge or Indian probate judge must lodge the complete record relating to the petition with the designated LTRO under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(f) Successive petitions for rehearing are not permitted, and except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the jurisdiction of the administrative law judge or Indian probate judge terminates upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein prevents the Board from remanding a case for further hearing or rehearing after appeal.

(g) At the time the final decision is entered following the filing of a petition for rehearing, the administrative law judge or Indian probate judge must direct a notice of such action with a copy of the decision to the Superintendent and to the interested parties and must mail the same by regular mail to the said parties at their addresses of record.

(h) No distribution may be made under such order for a period of 75 days following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as provided in this subpart.

§ 4.242 Reopening.

(a) A person claiming an interest in an estate may file a petition in writing for reopening of the case if he or she:

(1) Had no actual notice of the original proceedings;

(2) Was not on the reservation or otherwise in the vicinity at any time

while the public notices of the hearing were posted; and

(3) Files the petition within 3 years after the date of a final decision issued by an administrative law judge, Indian probate judge, or the Board, except as provided in §§ 4.203 and 4.206 and paragraph (i) of this section.

(b) The petition must be addressed to the administrative law judge or Indian probate judge and filed at his or her office. The petitioner must also furnish a copy of the petition to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations must be under oath and supported by affidavits.

(c) If the administrative law judge or Indian probate judge finds that proper grounds are not shown, he or she will issue an order denying the petition and giving the reasons for the denial. Copies of the administrative law judge's or Indian probate judge's decision must be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(d) If the petition appears to show merit, the administrative law judge or Indian probate judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition.

(1) These persons may resist the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the administrative law judge or Indian probate judge.

(2) The administrative law judge or Indian probate judge will then reconsider, with or without a hearing as he or she may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision.

(3) Copies of the administrative law judge's or Indian probate judge's decision must be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(e) To prevent manifest error, an administrative law judge or Indian probate judge may reopen a case within 3 years from the date of the final decision, after due notice on his or her own motion, or on petition of a BIA officer. Copies of the administrative law judge's or Indian probate judge's decision must be mailed to all interested parties and to the Superintendent.

(f) The administrative law judge or Indian probate judge may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(g) The administrative law judge or Indian probate judge must lodge the record made in disposing of a reopening petition with the designated LTRO under § 4.236(b) and must furnish a duplicate record thereof to the Superintendent.

(h) No distribution may be made under a decision issued under paragraph (c), (d), or (e) of this section for 75 days following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party.

(i) A petition for reopening filed more than 3 years after the entry of a final decision in a probate proceeding will be allowed only upon a showing that:

(1) A manifest injustice will occur;

(2) A reasonable possibility exists for correction of the error;

(3) The petitioner had no actual notice of the original proceedings; and

(4) The petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted.

(j) The administrative law judge or Indian probate judge may deny a petition filed under paragraph (i) of this section on the basis of the petition and available BIA records. No such petition will be granted unless the administrative law judge or Indian probate judge:

(1) Has caused copies of the petition and all other papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition; and

(2) Has allowed those persons an opportunity to resist the petition by filing answers, cross petitions, or briefs as provided in paragraph (d) of this section.

§ 4.243 [Removed]

■ 17. Remove § 4.243 and the undesignated center heading.

■ 18. Revise §§ 4.250, 4.251, and 4.252 to read as follows:

Claims

§ 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian must be filed with the agency:

(1) Within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 CFR 15.101; or

(2) Within 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later, unless all of the heirs and/or beneficiaries agree to waive the applicable time limit and allow a late claim to be filed.

(b) No claim will be paid from trust or restricted assets when the deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

(c) All claims must be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account.

(1) Each claim must show the names and addresses of all parties in addition to the decedent from whom payment might be sought.

(2) Each claim must be supplemented by an affidavit, in triplicate, of the claimant or someone on his or her behalf that:

(i) The amount claimed is justly due from the decedent;

(ii) No payments have been made on the account which are not credited thereon as shown by the itemized statement; and

(iii) There are no offsets to the knowledge of the claimant.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an interim order from the deciding official.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments will not be allowed.

§ 4.251 Priority of claims.

(a) Upon motion of the Superintendent or an interested party, the deciding official may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

(b) After the costs of administration, the deciding official may authorize payment of priority claims as follows:

(1) Claims for funeral expenses (including the cemetery marker);

(2) Claims for medical expenses for the last illness;

(3) Claims for nursing home or other care facility expenses;

(4) Claims of an Indian tribe; and

(5) Claims reduced to judgment by a court of competent jurisdiction.

(c) After the priority claims, the deciding official may authorize payment of all remaining claims, referred to as general claims.

(d) The deciding official has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.

(1) If a claim is reduced, the deciding official will order payment only of the reduced amount.

(2) A deciding official may reduce or disallow both priority claims and general claims.

(e) If, as of the date of the initial informal or formal hearing, there is not enough money in the IIM account to pay all claims, the deciding official will order payment of allowed priority claims first, either in the order identified in paragraph (b) of this section or on a pro rata (reduced) basis.

(f) If, as of the date of the initial informal or formal hearing, less than $1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.

(g) The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

(h) Interest or penalties charged against either priority or general claims after the date of death will not be paid.

§ 4.252 Property subject to claims.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir or beneficiary remains in or passes out of trust.

■ 19. Revise §§ 4.260, 4.261, and 4.262 to read as follows:

Wills

§ 4.260 Making of a will; review as to form; revocation.

(a) An Indian 18 years of age or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of this property by a will executed in writing and attested by two disinterested adult witnesses.

(b) When an Indian executes a will and submits it to the Superintendent, the Superintendent must forward it to the Office of the Solicitor for examination as to adequacy of form, and for submission by the Office of the Solicitor to the Superintendent of any appropriate comments. The will, codicil, or any replacement or copy thereof, may be retained by the Superintendent at the request of the testator or testatrix for safekeeping. A will must be held in absolute confidence, and no person other than the testator may admit its existence or divulge its contents before the death of the testator.

(c) The testator may, at any time during his or her lifetime, revoke his or her will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it. No will that is subject to the regulations of this subpart will be deemed to be revoked by operation of the law of any State.

(d) A will, codicil, or revocation may be made self-proved in the manner provided in § 4.233(a)–(b).

§ 4.261 Anti-lapse provisions.

(a) This section applies when:

(1) An Indian testator devises or bequeaths trust property to any of his or her grandparents or to the lineal descendant of a grandparent; and

(2) The beneficiary dies before the testator leaving lineal descendants.

(b) The lineal descendants referred to in paragraph (a)(2) of this section take the right, title, or interest so given by the will per stirpes.

(c) Relationship by adoption is equivalent to relationship by blood.

§ 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, may take directly or indirectly any devise or bequest under deceased's will. All right, title, and interest existing in such a situation will vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

■ 20. Revise §§ 4.270, 4.271, 4.272, and 4.273 to read as follows:

Custody and Distribution of Estates

§ 4.270 Custody and control of trust estates.

(a) The Superintendent may:

(1) Assume custody or control of all tangible trust personal property of a deceased Indian; and

(2) Take such action, including sale of the property, as in his or her judgment is necessary for the benefit of the estate, the heirs, and the beneficiaries, pending entry of the decision provided for in §§ 4.214, 4.240, 4.241, or 4.312.

(b) All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from:

(1) Those funds of the deceased that are under the Department's control; or

(2) The proceeds of a sale of the property or a part thereof.

(c) If a deciding official has been assigned to adjudicate the estate, his or her approval is required before payment can be made under paragraph (b)(2) of this section.

§ 4.271 Omitted property.

(a) This section applies when, after issuance of a decision under §§ 4.214, 4.240, or 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory.

(1) The inventory can be modified to include the omitted property for distribution under the original decision.

(2) Modification may be made either administratively by BIA or by a modification order prepared by him or her for the approval and signature of a deciding official.

(3) Copies of all modifications must be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, BIA must notify the deciding official, who will proceed to hold an informal or formal hearing if necessary and issue a decision under §§ 4.214 or 4.240. The record of any such proceeding must be lodged with the designated LTRO under § 4.236(b).

§ 4.272 Improperly included property.

(a) When, after a decision under §§ 4.214, 4.240, or 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the agency where the property is located, or by any interested party.

(b) An administrative law judge or Indian probate judge will review the record of the title upon which the modification is to be based and enter an appropriate decision. If the decision is entered without a formal hearing, the administrative law judge or Indian probate judge must give notice of his or

her action to all parties whose rights are adversely affected, allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate, the administrative law judge or Indian probate judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted in accordance with the rules of this subpart. The administrative law judge or Indian probate judge will enter a final decision based on his or her findings, modifying or refusing to modify the property inventory. His or her decision will become final at the end of 60 days from the date it is mailed, unless an aggrieved party files a notice of appeal within such period. Notice of entry of the decision must be given in accordance with § 4.240(b).

(d) A party aggrieved by the deciding official's decision may appeal to the Board under §§ 4.310 through 4.323.

(e) The record of all proceedings must be lodged with the designated LTRO under § 4.236(b).

§ 4.273 Distribution of estates.

(a) The Superintendent must initiate payment of allowed claims, distribution of the estate, and all other actions required by the deciding official's final order 75 days after a final order has been issued, unless he or she has received:

(1) A copy of a request for de novo review filed under § 4.215;

(2) A copy of a petition for rehearing filed under § 4.241(a); or

(3) A copy of a notice of appeal filed under § 4.320(b).

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under §§ 4.215, 4.241, or 4.242, unless the administrative law judge or Indian probate judge orders otherwise in writing. The Board may, at any time, authorize the administrative law judge or Indian probate judge to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

■ 21. Revise §§ 4.281 and 4.282 to read as follows:

Miscellaneous

§ 4.281 Claims for attorney fees.

(a) The deciding official may allow fees for attorneys representing Indians in proceedings under this part.

(1) At the discretion of the deciding official, these fees may be chargeable against the interests of the party represented or may be taxed as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing and must be supported by whatever proof the deciding official requires.

(3) In determining attorney fees, consideration must be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all interested parties.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

§ 4.282 Guardians for incompetents.

Minors and other legal incompetents who are interested parties must be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the deciding official.

■ 22. Revise §§ 4.300, 4.301, 4.302, 4.303, 4.304, 4.305, 4.306, 4.307, and 4.308 to read as follows:

Tribal Purchase of Interests Under Special Statutes

§ 4.300 Authority and scope.

(a) Sections 4.300 through 4.308 apply to formal proceedings in Indian probate that relate to the tribal purchase of a decedent's interests in the trust and restricted land shown in the following table.

Location of trust or restricted land	Legislation governing purchase
(1) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951).	The Act of December 31, 1970 (Pub. L. 91–627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968).
(2) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37).	The Act of August 10, 1972 (Pub. L. 92–377; 86 Stat. 530).
(3) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).	The Act of September 29, 1972 (Pub. L. 92–443; 86 Stat. 744).

(b) In the exercise of probate authority, an administrative law judge or Indian probate judge will determine—

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(c) In making a determination under paragraph (b)(1) of this section, the following issues will be determined by the official tribal roll, which is binding upon the administrative law judge or Indian probate judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(d) For good cause shown, the administrative law judge or Indian probate judge may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

§ 4.301 Valuation report.

(a) In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, BIA must furnish a valuation of the decedent's interests when the record reveals to the Superintendent:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 4.300; and

(2) That one or more of the probable heirs or beneficiaries who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) If there is a surviving spouse whose interests may be subject to the tribal option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests. The valuation must be made on the basis of the fair market value of the property, including fixed

improvements, as of the date of decedent's death.

(c) BIA must include the valuation report in the probate package submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the office of the Superintendent or the administrative law judge or Indian probate judge.

§ 4.302 Conclusion of probate and tribal exercise of statutory option.

(a) *Conclusion of probate; findings in the probate decision.* (1) When a decedent is shown to have owned land interests in any one or more of the reservations designated in § 4.300, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors will first be concluded as final for the Department in accordance with §§ 4.216 through 4.282 and §§ 4.310 through 4.323. This decision is referred to in this section as the ''probate decision.''

(2) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal option.

(i) The finding must be included in the probate decision setting forth the apparent rights of the tribe as against affected heirs or beneficiaries and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-half of such interests.

(ii) If the finding is that there are no interests subject to the tribal option, the decision must so state.

(iii) A copy of the probate decision, to which must be attached a copy of the valuation report, must be distributed to all interested parties in accordance with § 4.240.

(b) *Tribal exercise of statutory option.* (1) A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days of the probate decision unless a petition for rehearing or a demand for hearing has been filed under §§ 4.304 or 4.305.

(2) If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may not, however, claim an interest less than the decedent's total interest in any one individual tract.

(3) The tribe must file a written notice of purchase with the Superintendent, together with the tribe's certification that copies have been mailed on the same date to the administrative law judge or Indian probate judge and to the affected heirs or beneficiaries. Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or beneficiaries.

§ 4.303 Notice by surviving spouse to reserve a life estate.

When the heir or beneficiary whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such interests. The spouse must file a written notice to reserve with the Superintendent within 30 days after the tribe has exercised its option to purchase the interest in question, together with a certification that copies thereof have been mailed on the same date to the administrative law judge or Indian probate judge and the tribe. Failure to timely file a notice to reserve a life estate will constitute a waiver thereof.

§ 4.304 Rehearing.

Any interested party aggrieved by the probate decision may, within 60 days from the date of the probate decision, file with the administrative law judge or Indian probate judge a written petition for rehearing in accordance with § 4.241.

§ 4.305 Hearing on tribal option to purchase interests.

(a) *Demand for hearing.* Any interested party aggrieved by the exercise of the tribal option to purchase the interests in question or the valuation of the interests as set forth in the valuation report may file with the administrative law judge or Indian probate judge a written demand for hearing. The demand must:

(1) Be filed within 60 days from the date of the probate decision or 60 days from the date of the decision on rehearing, or within 20 days from the date the tribe exercises its option to purchase available interests, whichever is applicable;

(2) Include a certification that copies of the demand have been mailed on the same date to the Superintendent and to each interested party; and

(3) State specifically and concisely the grounds upon which it is based.

(b) *Notice of hearing.* The administrative law judge or Indian probate judge must, upon receiving a demand for hearing:

(1) Set a time and place for the hearing after expiration of the 60-day period fixed for the filing of the demand for hearing as provided in § 4.305(a); and

(2) Mail a notice of the hearing to all interested parties not less than 30 days in advance.

(c) *Burden of proof at the hearing.* At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(d) *Decision after hearing; appeal.* (1) Upon conclusion of the hearing, the administrative law judge or Indian probate judge will issue a decision that determines all of the issues including, but not limited to:

(i) The fair market value of the interests purchased by the tribe; and

(ii) Any adjustment of the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(2) The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§ 4.310 through 4.323.

(3) The administrative law judge or Indian probate judge must lodge the complete record relating to the demand for hearing with the LTRO as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each interested party.

§ 4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with § 4.305, whichever is applicable. Payment must be made within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever is later.

§ 4.307 Title.

(a) Upon payment by the tribe of the interests purchased, the Superintendent must:

(1) Issue a certificate to the administrative law judge or Indian probate judge that payment has been made; and

(2) File with the certificate all supporting documents required by the administrative law judge or Indian probate judge.

(b) After receiving the certificate and supporting documents, the administrative law judge or Indian probate judge will:

(1) Issue an order that the United States holds title to the interests in trust for the tribe;

(2) File the complete record, including the decision, with the LTRO as provided in § 4.236(b);

(3) Furnish a duplicate copy of the record to the Superintendent; and

(4) Mail a notice of the action together with a copy of the decision to each interested party.

§ 4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with § 4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

Cross Reference: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Director of the Bureau of Indian Affairs.

■ 23. Revise §§ 4.310, 4.311, 4.312, 4.313, 4.314, 4.315, 4.316, 4.317, and 4.318 to read as follows:

General Rules Applicable to Proceedings on Appeal Before the Interior Board of Indian Appeals

§ 4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is:

(1) For most documents, the date of mailing or the date of personal delivery; or

(2) For a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e), the date that the Board receives the motion.

(b) *Serving notices of appeal and pleadings.* Any party filing a notice of appeal or pleading before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery or mailing.

(1) Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party.

(2) Where a party is represented by more than one attorney, service on any one attorney is sufficient.

(3) The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document:

(1) The day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included;

(2) The last day of the period is to be included, unless it is a nonbusiness day (*e.g.*, Saturday, Sunday, or Federal holiday), in which event the period runs until the end of the next business day; and

(3) When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal holidays, and other nonbusiness days are excluded from the computation.

(d) *Extensions of time.* (1) The Board may extend the time for filing or serving any document except a notice of appeal.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§ 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receiving the notice of docketing. The appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receiving the appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other interested parties. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) The appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) BIA is considered an interested party in any proceeding before the Board. The Board may request that BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§ 4.312 Board decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse, or set aside any proposed finding, conclusion, or order of an administrative law judge, Indian probate judge, or BIA official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§ 4.313 Amicus curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene, to join other parties, to appear as amicus curiae, or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. The Board may grant the permission or relief requested for specified purposes and subject to limitations it established. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration of a Board decision.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order

and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any Federal court to the Board for further proceedings, the Board will remand the matter to an administrative law judge, an Indian probate judge, or BIA. In the alternative, to the extent the court's directive and time limitations permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries about any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems this action appropriate. If, before a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the OHA Director will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues that were before the administrative law judge or Indian probate judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

Appeals to the Board of Indian Appeals in Probate Matters

§ 4.320 Who may appeal.

(a) *Right of appeal.* An interested party has a right to appeal to the Board from an order of an administrative law judge or Indian probate judge on a petition for rehearing or petition for reopening or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) *Notice of appeal.* Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by the appellant, the appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(1) A statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed.

(2) The notice of appeal must include the names and addresses of parties served.

(3) A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) *Service of copies of notice of appeal.* The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals.

(1) A copy must be served upon the administrative law judge or Indian probate judge whose decision is appealed as well as all interested parties.

(2) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) *Action by the administrative law judge or Indian probate judge; record inspection.* The administrative law judge or Indian probate judge, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b), 4.241(d), or 4.242(f) to the LTRO designated under § 4.236(b). The duplicate record must be conformed to the original by the LTRO and will thereafter be available for inspection either at the LTRO or at the office of the Superintendent. If a transcript of the hearing was not prepared, the administrative law judge or Indian probate judge will have a transcript prepared that must be forwarded to the Board within 30 days from receiving a copy of the notice of appeal.

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the LTRO to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receiving the notice of docketing issued under § 4.332.

§ 4.322 Docketing.

The appeal will be docketed by the Board upon receiving the administrative record from the LTRO. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

(a) After the Board makes a decision other than a remand, it must forward to the LTRO designated under § 4.236(b):

(1) The record filed with the Board; and

(2) All documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision.

(b) The LTRO must conform the duplicate record required by § 4.320(d) to the original sent under paragraph (a)(1) of this section and forward the conformed record to the Superintendent concerned.

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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.

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- California; published 3-8-05

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- Georgia; published 3-8-05

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- Architect-engineer services; contracting improvements; published 3-9-05
- Certain subcontract notification requirements; elimination; published 3-9-05
- Increased justification and approval threshold for DoD, NASA and Coast Guard; published 3-9-05
- Landscaping and pest control services added to Small Business Competitiveness Demonstration Program; published 3-9-05
- Subcontracts for commercial items; published 3-9-05
- Technical amendments; published 3-9-05

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Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Washington; published 2-7-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Clofentezine; published 3-9-05
- Fenbuconazole; published 3-9-05

Water pollution control:
- National Pollutant Discharge Elimination System (NPDES)—
  - Storm water discharges for oil and gas construction activity disturbing 1 to 5 acres of land; postponement; published 3-9-05

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- Washington and Boston regional offices; address changes; published 3-9-05

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- Certain subcontract notification requirements; elimination; published 3-9-05
- Landscaping and pest control services added to Small Business Competitiveness Demonstration Program; published 3-9-05
- Subcontracts for commercial items; published 3-9-05
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Indian trust estates; probate adjudication functions; consolidation; published 3-9-05

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- Certain subcontract notification requirements; elimination; published 3-9-05
- Increased justification and approval threshold for DoD, NASA and Coast Guard; published 3-9-05
- Landscaping and pest control services added to Small Business Competitiveness Demonstration Program; published 3-9-05
- Subcontracts for commercial items; published 3-9-05
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Supplemental security income:
- Aged, blind, and disabled—
  - Income and resources; determination; published 2-7-05

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Airworthiness directives:
- Boeing; published 2-2-05

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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]

Cotton research and promotion order:
- Cotton Board Rules and Regulations; amendments; comments due by 3-14-05; published 1-12-05 [FR 05-00475]

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  - West Coast salmonids; comments due by 3-14-05; published 2-7-05 [FR 05-02292]

International fisheries regulations:
- West Coast States and Western Pacific fisheries—
  - Pacific halibut catch sharing plan; comments due by 3-16-05; published 2-7-05 [FR 05-02282]

CONSUMER PRODUCT SAFETY COMMISSION

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- Bedclothes; flammability (open flame ignition) standard; comments due by 3-14-05; published 1-13-05 [FR 05-00415]

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- Australia and Morocco; free trade agreements; comments due by 3-14-05; published 1-13-05 [FR 05-00759]
- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

National Security Personnel System; establishment; comments due by 3-16-05; published 2-14-05 [FR 05-02582]

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- Vocational and adult education—
  - Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

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  - Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

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- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

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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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S. 5/P.L. 109–2

Class Action Fairness Act of 2005 (Feb. 18, 2005; 119 Stat. 4)

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