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Contents

Federal Register

Vol. 70, No. 138

Wednesday, July 20, 2005

Agricultural Marketing Service
RULES
Vidalia onions grown in—
Georgia, 41605–41608

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service
See Natural Resources Conservation Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41679

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Highly pathogenic avian influenza; additional restrictions, 41608–41610
NOTICES
Environmental statements; availability, etc.:
Nonregulated status determinations—
Syngenta Seeds, Inc.; genetically engineered insect resistant cotton, 41679–41681

Army Department
See Engineers Corps
PROPOSED RULES
Armed forces disciplinary control boards and off-installation liaison and operations; policy revision, 41641–41648
NOTICES
Inventions, Government-owned; availability for licensing, 41691–41692

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; correction, 41759

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Opportunities for Low-Income Individuals, 41759–41772

Coast Guard
RULES
Pollution:
Tank vessels; tank level or pressure monitoring devices; suspension, 41614–41617
PROPOSED RULES
Drawbridge operations:
Florida, 41648–41650
NOTICES
Reports and guidance documents; availability, etc.:
Environmental Equivalency Evaluation Index; oil outflow performance of alternative designs to double hull oil tankers; assessment methodology, 41777–41778

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Loan and purchase programs:
Conservation Security Program, 41608

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 41689

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41690–41691

Copyright Office, Library of Congress
PROPOSED RULES
Copyright Arbitration Royalty Panel rules and procedures:
Cable statutory license; royalty rates adjustment, 41650–41652

Defense Base Closure and Realignment Commission
NOTICES
Meetings; correction, 41691

Defense Department
See Army Department
See Engineers Corps

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Client Assistance Program, 41696–41697
Rehabilitation Long-Term Training Program, 41693–41696
Meetings:
National Assessment Governing Board, 41697–41698

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Black & Decker, 41790–41791
CTNA Akron Test Center, 41791
Dorby Frocks, 41791
Hilltop Cedar, 41791–41792
Menasha Packaging Co., 41792
Meridian Automotive Systems, Inc., et al., 41792–41796
Tellabs, et al., 41796–41798

Energy Department
See Federal Energy Regulatory Commission

NOTICES
Committees; establishment, renewal, termination, etc.:
High Energy Physics Advisory Panel, 41698

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Wyoming Valley Levee Raising Project, PA; correction, 41820
Environmental statements; notice of intent:
Highland Lakes, Colorado River, TX; flood damage reduction and recreation development, 41692–41693

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Etoxazole, 41619–41625
Two isopropylamine salts of alkyl C4 and alkyl C8- 10 ethoxyphosphat esters; correction, 41618–41619
Superfund program:
National oil and hazardous substances contingency plan priorities list, 41625–41629
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Idaho; correction, 41652–41653
Superfund program:
National oil and hazardous substances contingency plan priorities list, 41653–41654
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41700–41703
Grants and cooperative agreements; availability, etc.:
Senior Environmental Employment Program; confidential business information access, 41703–41704
Meetings:
Gulf of Mexico Program Policy Review Board, 41704
Pesticide, food, and feed additive petitions:
Dow AgroSciences LLC, 41718–41726
Pesticide programs:
Risk assessments—
1,2-Benzisothiazolin-3-one (BIT), 41707–41709
Azadioxabicyclooctane, 41704–41707
Pera-tertiary amylphenoll, 41709–41711
Pesticide registration, cancellation, etc.:
Bayer CropScience LP, et al., 41712–41714
Dimethoate, 41714–41717
Hartz Mountain Corp., 41717–41718
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Alkoxylated ether amines, 41726–41730
Spinosad, 41730–41735

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Area navigation routes, 41610–41613
Class E airspace, 41613–41614
Noise standards:
Subsonic jet airplanes and subsonic transport category large airplanes
Correction, 41610
NOTICES
Advisory circulars; availability, etc.:
Environmental conditions and test procedures for airborne equipment, 41809–41810
Thermal/Acoustic insulation flame propagation test method details, 41810
Exemption petitions; summary and disposition, 41810–41811

Federal Communications Commission
RULES
Digital television stations; table of assignments:
Oklahoma, 41629
Radio frequency devices:
Wireless operations in 3650-3700 MHz band; correction, 41631
Radio stations; table of assignments:
Georgia, 41630
Louisiana and Texas, 41630–41631
New York and Vermont, 41629–41630
PROPOSED RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Universal Service Fund Management; comprehensive review, 41658–41678
Price cap local exchange carriers; special access rates, 41654–41655
Wireless telecommunications services—
Telephone number portability, 41655–41658
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41735–41738
Common carrier services:
Wireless telecommunications services—
FM broadcast construction permits auction, 41738–41754
Declaratory ruling petitions:
Panasonic Corporation of North America, 41754–41755
Reports and guidance documents; availability, etc.:
Communications Act; access by persons with disabilities
Telecommunications equipment manufactures and service providers; complaints obligation, 41755–41756
Rulemaking proceedings; petitions filed, granted, denied, etc., 41756

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
General administrative regulations; policies submission, policies provisions, premium rates, and premium reduction plans, 41822–41924

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 41698–41700

Federal Labor Relations Authority
RULES
Organization, functions, and authority delegations:
Washington and Boston regional offices; telephone and fax number changes, 41605

Federal Maritime Commission
NOTICES
Ocean transportation intermediary licenses:
A. Burghart Shipping Co., Inc., et al., 41756–41757
Fastpak Express Corp., et al., 41757
Ocean Blue Express, Inc., et al., 41757–41758

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Anderson, Roger D., et al.; vision requirement exemption applications, 41811–41812

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 41758–41759

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 41782–41786
Environmental statements; availability, etc.:
Lost Trail National Wildlife Refuge, MT; comprehensive conservation plan, 41786–41787

Food and Drug Administration
NOTICES
Meetings:
Raw oysters; vibrio parahaemolyticus; public health impact; quantitative risk assessment, 41772
Reports and guidance documents; availability, etc.:
Raw oysters; pathogenic vibrio parahaemolyticus; public health impact; quantitative risk assessment, 41772–41773

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Fiscal Years 2005-2008 fee changes, 41635–41641

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Southaven, Mississippi, 41681

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Federal claims; interest rates on overdue debts, 41759

Homeland Security Department
See Coast Guard
See National Communications System
NOTICES
National Biodefence Analysis and Countermeasures Center; sponsorship., 41777

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41778–41780
Privacy Act:
Systems of records, 41780–41782
Reports and guidance documents; availability, etc.:
Occupancy requirements of subsidized multifamily housing programs; HUD Handbook 4350.3 REV-1 revised; Web site availability, 41926

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 41773–41776

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41816–41818
Meetings:
Taxpayer Advocacy Panels, 41819

International Trade Administration
NOTICES
Antidumping:
Carbon and alloy steel wire rod from—
Canada, 41681–41687
Countervailing duties:
Iron metal castings from—
India, 41687–41688

International Trade Commission
NOTICES
Import investigations:
Foam masking tape, 41787–41788

Justice Department
NOTICES
Pollution control; consent judgments:
Advanced Coating Techniques, Inc., 41788
Gerald Pelletier, Inc., 41788–41789
Gloucester, MA, 41789
Licking County, OH, 41789–41790

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41790

Library of Congress
See Copyright Office, Library of Congress

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 41798–41799

National Communications System
NOTICES
Meetings:
National Security Telecommunications Advisory Committee, 41778

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Advanced air bags; phase-in requirements, 41631–41634

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 41688
Permits:
Exempted fishing, 41688–41689

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 41799

Natural Resources Conservation Service
RULES
Loan and purchase programs:
Conservation Security Program, 41608

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 41799–41801
Reactor Safeguards Advisory Committee, 41801

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 41801

Presidential Documents
PROCLAMATIONS
Special observances:
Captive Nations Week (Proc. 7913), 41931–41932
EXECUTIVE ORDERS
Government agencies and employees:
Director of National Intelligence, Office of; amendments to Executive orders in light of establishment (EO 13383), 41933
ADMINISTRATIVE ORDERS
Philippines; anti-terrorism assistance (Presidential Determination)
No. 2005-28 of July 12, 2005, 41927–41929

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41801–41802
Securities:
Suspension of trading—
NetCurrent Information Services, Inc., 41802
Secure Solutions Holdings, Inc., 41802–41803
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 41803–41804
International Securities Exchange, Inc., 41804–41805
International Securities Exchange, Inc.; correction, 41820
New York Stock Exchange, Inc., 41806
Pacific Exchange, Inc., 41806–41807

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Telesoft Partners II SBIC, L.P., 41807–41808

State Department
NOTICES
Culturally significant objects imported for exhibition:
Origins of European Printmaking: 15th Century Woodcuts and Their Public, 41808

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Cornhusker Railways, LLC, 41812–41813
Railroad services abandonment:
Norfolk Southern Railway Co., 41813–41814

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
See Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41808–41809

Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41814–41815

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 41815–41816

Separate Parts In This Issue

Part II
Agriculture Department, Federal Crop Insurance Corporation, 41822–41924

Part III
Housing and Urban Development Department, 41926

Part IV
Executive Office of the President, Presidential Documents, 41927–41929, 41931–41933

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
7913 41931

Executive Orders:
12139 (Amended by EO 13383) 41933
12949 (Amended by EO 13383) 41933
13383 41933

Administrative Orders:
Presidential Determinations:
No. 2005-28 of July 12, 2005 41929

5 CFR
Ch.XIV 41605

7 CFR
400 41822
955 41605
1469 41608

9 CFR
93 41608
94 41608
95 41608

Proposed Rules:
391 41635
590 41635
592 41635

14 CFR
36 41610
71 (5 documents) 41610, 41611, 41613
91 41610

32 CFR

Proposed Rules:
631 41641

33 CFR
155 41614
156 41614

Proposed Rules:
117 41648

37 CFR

Proposed Rules:
201 41650
256 41650

40 CFR
180 (2 documents) 41618, 41619
300 41625

Proposed Rules:
52 41652
300 41653

47 CFR
73 (4 documents) 41629, 41630
90 41631

Proposed Rules:
Ch. 1 41654
52 41655
54 41658

49 CFR
571 41631

Rules and Regulations

Federal Register
Vol. 70, No. 138
Wednesday, July 20, 2005

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

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV, Appendix A

New Telephone and Fax Numbers

AGENCY: Federal Labor Relations Authority.

ACTION: Amendment of rules and regulations.

SUMMARY: Changes have been made to the telephone number of the Federal Labor Relations Authority's Washington Regional Office, and the telephone and fax numbers of the Boston Regional Office. Accordingly, it is necessary to amend 5 CFR Chapter XIV to reflect the changes.

EFFECTIVE DATE: This rule is effective July 14, 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 changes in the telephone number of the Washington Regional Office, and the telephone and fax numbers of the Boston Regional Office, it is necessary to revise these provisions of the agency's regulations.

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) 565–5100; fax: (617) 565–6262.

(2) Washington, DC Regional Office—1400 K Street NW., Suite 200, Washington, DC 20424–0001; telephone: (202) 357–6029; fax: (202) 482–6724.

* * * * *

Dated: July 14, 2005.

Yvonne Thomas,

Director, Administrative Services Division.

[FR Doc. 05–14260 Filed 7–19–05; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV05–955–1 FIR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which increased the assessment rate and changed the assessable unit established for the Vidalia Onion Committee (Committee) for the 2005 and subsequent fiscal periods from $0.12 per 50-pound bag or equivalent to $0.10 per 40-pound carton of Vidalia onions. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound more than the assessment rate previously in effect. The Committee locally administers the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 19, 2005.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning January 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that increased the assessment rate and changed the assessable unit established for the Vidalia Onion Committee (Committee) for the 2005 and subsequent fiscal periods from $0.12 per 50-pound bag or equivalent to $0.10 per 40-pound carton of Vidalia onions. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound more than the assessment rate previously in effect.

The Vidalia onion order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.12 per 50-pound bag or equivalent that would continue in effect from 2001 and subsequent fiscal periods unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met December 15, 2004, and unanimously recommended 2005 expenditures of $450,300 and an assessment rate of $0.10 per 40-pound carton of Vidalia onions. In comparison, last year's budgeted expenditures were $312,215. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound more than the rate currently in effect. The increase in the assessment rate is based on the reduction in size of the assessable unit from 50-pounds to 40-pounds. Although the reduction in size of the assessable unit increases the number of assessable cartons, it only slightly increases the actual assessment per pound of Vidalia onions handled from $0.0024 per pound to $0.0025 per pound.

The major expenditures recommended by the Committee for the 2005 year include $92,500 for salaries and benefits, $59,800 for administrative expenses, $290,000 for marketing expenses, $5,000 for research expenses, and $3,000 for compliance. Budgeted expenses for these items in 2004 were $66,280, $237,435, $7,500, $1000, and $0, respectively.

The assessment rate recommended by the Committee was derived by multiplying the assessment rate by the number of 40-pound cartons of Vidalia onions the industry is expected to ship for the 2005 fiscal period, and took into consideration the availability of matching funds for research and promotion from the State of Georgia. Vidalia onion shipments for the 2005 fiscal period are estimated at 3,350,000 40-pound cartons which should provide $335,000 in assessment income. Income derived from handler assessments, interest income ($3,000), contributions from the Georgia Department of Agriculture ($150,000), and income from the sale of Point-of-Sale advertisement material ($6,000) will be adequate to cover budgeted expenses. Funds in the reserve (currently $67,331) will be kept within the maximum permitted by the order, which is three fiscal periods' budgeted expenses (§ 955.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 145 producers of Vidalia onions in the production area and approximately 110 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than $6,000,000.

Based on information from the Georgia Agricultural Statistical Service and Committee data, around 90 percent of Vidalia onion handlers ship under $5,000,000 worth of onions on an annual basis. In addition, based on acreage, production, grower prices reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is approximately $489,000. Thus, the majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule continues in effect the action that increased the assessment rate and changed the assessable unit from $0.12 per 50-pound bag or equivalent to $0.10 per 40-pound carton of Vidalia onions for the 2005 and subsequent fiscal periods. The Committee unanimously recommended 2005 expenditures of $450,300 and an assessment rate of $0.10 per 40-pound carton of Vidalia onions. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound higher than the $0.12 per 50-pound bag or equivalent assessment rate in effect during 2004. The quantity of assessable Vidalia onions for the 2005 season is estimated at 3,350,000 40-pound cartons. Thus, the $0.10 per 40-pound carton rate should provide $335,000 in assessment income. Income derived from handler assessments, interest income ($3,000), contributions from the Georgia Department of Agriculture ($150,000), and income from the sale of Point-of-Sale advertisement material ($6,000) will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2005 year include $92,500 for salaries, $59,800 for administrative expenses, $290,000 for marketing expenses, $5,000 for research expenses, and $3,000 for compliance. Budgeted expenses for these items in 2004 were $66,280, $237,435, $7,500, $1,000, and $0, respectively.

The Committee at its December 15, 2004, meeting unanimously recommended reducing the assessable carton size from a 50-pound bag or equivalent to the current industry standard 40-pound carton size. The reduction in the assessable unit size increases the number of assessable units. The assessable unit size reduction also causes a slight increase in the actual per pound rate of assessment from $0.0024 to $0.0025, or an increase of $0.0001 per pound.

The Committee reviewed and unanimously recommended 2005 expenditures of $450,300 which included increases in marketing, compliance, administrative expenses, and research programs. Prior to arriving at this budget, the Committee considered information from various sources. Alternative expenditure levels were discussed by the Committee based upon the relative value of various research and promotion projects to the Vidalia onion industry. The Committee also discussed keeping the current $0.12 per 50-pound bag or equivalent assessment rate. The Committee believes, however, that using the current industry standard unit of 40-pounds will increase efficiency by saving handlers the considerable time and expense previously spent in converting 40-pound units to the 50-pound assessment rate unit. The Committee also felt that the slight increase of $0.0001 per pound in assessments is insignificant when considering the benefits of using the industry standard unit. Thus, the assessment rate of $0.10 per 40-pound carton of assessable Vidalia onions was approved unanimously. The expected income was derived by multiplying the assessment rate by the estimated number of 40-pound cartons the industry expects to ship for the 2005 season. Also available for expenditure are interest income and matching funds from the State of Georgia (for expenditures pursuant to § 955.50; production research, marketing research development, and marketing promotion, including paid advertising).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2005 season could range between $13.75 and $17.15 per 40-pound carton of Vidalia onions. Therefore, the estimated assessment revenue for the 2005 fiscal period as a percentage of total grower revenue could range between 0.58 and 0.73 percent.

This action continues in effect the action that increased the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. As noted earlier, the savings in time and expense previously spent on converting the industry standard 40-pound carton to the 50-pound unit used by the Committee more than offsets the negligible assessment increase of $0.0001 per pound of onions handled. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on March 8, 2005 (70 FR 11114). Copies of that rule were also mailed or sent via facsimile to all Vidalia onion handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on May 9, 2005. One comment was received.

The commenter stated that agricultural industry participants do not need government financial support to compete. However, the purpose of this action is to establish the assessment collection rate imposed on handlers, which enables the Committee to incur expenses to administer the program. Therefore, no changes will be made as a result of the comment.

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

After consideration of all relevant material presented, including the information and recommendation

submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

■ Accordingly, the interim final rule amending 7 CFR part 955 which was published at 70 FR 11114 on March 8, 2005, is adopted as a final rule without change.

Dated: July 14, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–14261 Filed 7–19–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1469

Conservation Security Program

AGENCY: Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

ACTION: Interim final rule; extension of public comment period.

SUMMARY: The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) published an amendment to the interim final rule for CSP on March 25, 2005, (70 FR 15201), with a comment period expiring July 25, 2005. By this notice, NRCS is extending the period during which it will accept public comment on the amended interim final rule for CSP to September 9, 2005. This extension is to give the public additional time to comment on key issues that have been raised regarding the implementation of the program under the amended interim final rule.

DATES: Comments must be postmarked by midnight, September 9, 2005.

ADDRESSES: Send comments in writing, by mail, to Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or by e-mail to *FarmBillRules@usda.gov;* Attn: Conservation Security Program.

The amended interim final rule may also be accessed via the Internet through the NRCS homepage, at *http://www.nrcs.usda.gov,* and by selecting Programs. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *craig.derickson@wdc.usda.gov,* Attention: Conservation Security Program.

Signed in Washington, DC, on July 14, 2005.

Bruce I. Knight,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

[FR Doc. 05–14297 Filed 7–19–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. 04–011–3]

Highly Pathogenic Avian Influenza; Additional Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of the H5N1 subtype of highly pathogenic avian influenza and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States. The interim rule was necessary to prevent the introduction of highly pathogenic avian influenza subtype H5N1 into the United States.

EFFECTIVE DATE: The interim rule became effective on February 4, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Karen A. James-Preston, Director, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

Avian influenza (AI) is a disease that can cause varying degrees of clinical illness in poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. Migratory waterfowl have proved to be the natural reservoir for this disease. AI viruses can be classified into low pathogenic (LPAI) and highly pathogenic (HPAI) forms based on the severity of the illness they cause. Most AI virus strains are LPAI and typically cause little or no clinical signs in infected birds. However, some LPAI virus strains are capable of mutating under field conditions into HPAI viruses, which are extremely infectious and fatal for chickens. HPAI can strike poultry quickly without any infection warning signs and, once established, the disease can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. In some instances, HPAI may even be transmitted to humans, with human infections of AI viruses on the rise in recent years.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases such as AI. The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including AI.

In an interim rule effective February 4, 2004, and published in the **Federal Register** on May 10, 2004 (69 FR 25820–25826, Docket No. 04–011–1), we amended the regulations to require that all pet birds and performing and theatrical birds and poultry of United States origin be subject to a 30-day quarantine at a USDA facility when they have spent any length of time in a

region reporting incidents of HPAI subtype H5N1 and to require that U.S. origin birds returning from any such region be accompanied by a permit. The interim rule also added new restrictions on the importation of unprocessed [1] bird and poultry carcasses, parts, and products, to allow such products from regions where HPAI subtype H5N1 is considered to exist only when accompanied by an import permit and only if they are research or educational materials destined for a museum or an educational or research institution. In the interim rule we also provided that products and byproducts of birds and poultry, including feathers, birds' nests, and bird trophies may be imported from areas where HPAI subtype H5N1 exists only when accompanied by a permit and authorized by the Administrator. Finally, we added a list of regions (Cambodia, China, Indonesia, Japan, Laos, South Korea, Thailand, and Vietnam) where HPAI subtype H5N1 is considered to exist.

Comments on the interim rule were required to be received on or before July 9, 2004. We received one comment by that date, from a private citizen. The issues raised by this commenter regarding the interim rule are discussed below.

The commenter suggested that APHIS should ban the importation into the United States of all types of birds. The commenter also stated that the 30-day home quarantine for pet birds and theatrical and performing birds and poultry was not effective because bird owners are not qualified to determine the disease status of their birds. The commenter therefore recommended discontinuing the practice of home quarantines, instead quarantining animals in specialized facilities for a minimum of 60 days. The commenter also recommended transferring veterinary inspection functions to epidemiologists and medical doctors. We do not believe the commenter's suggestion that we completely ban the importation of birds into the United States is needed to prevent the introduction of diseases such as avian influenza. We would also like to point out that home quarantine is not available for high-risk birds such as those returning from an H5N1 region; such high-risk birds are required to go to a USDA quarantine facility for a minimum of 30 days, which is a sufficient amount of time for any clinical signs of disease to appear. We also believe that it is most appropriate for a veterinarian to conduct inspections, given that they have animal health expertise that epidemiologists and medical doctors do not necessarily have.

The commenter expressed concern with the requirement that a notarized statement be signed by any bird owner that their bird has not been in contact with other poultry or birds while overseas for more than 60 days in any region other than one listed as a region where HPAI subtype H5N1 exists. The commenter stated that a notarized statement is not a good indicator of the bird's health because it would be easy to lie in such a statement. While it is possible for a bird owner to lie in a notarized statement, there are criminal and civil penalties that APHIS may pursue should a bird owner be found to have made a false statement. These penalties serve as a deterrent to bird owners providing false information in their notarized statements. Finally, we note that in addition to the notarized statement, the regulations also require that the birds undergo a port of entry veterinary inspection; be accompanied by a United States veterinary health certificate issued prior to the bird's departure from the United States containing an identification number which must match the number on the bird's leg band, tattoo, or microchip; and complete a 30-day home quarantine during which the bird is to be made available for health inspection and testing by Department inspectors upon request.

The commenter was also concerned that theatrical and performing animals would be allowed to enter the United States without a mandatory quarantine period. As stated in the interim rule, theatrical or performing birds of United States origin that have been in a region where HPAI subtype H5N1 exists are subject to a minimum 30-day quarantine in a USDA quarantine facility upon their return to the United States. Performing or theatrical birds returning from all other regions must undergo a 30-day home quarantine upon return to the United States.

The commenter also recommended that nests, carcasses, bird trophies, bird parts, or bird products be prohibited from importation into the United States from any region where HPAI subtype H5N1 exists. As stated in the interim rule, carcasses, and parts or products of carcasses, of poultry, game birds, or other birds may be imported into the United States from regions where HPAI subtype H5N1 is known to exist only if they are imported for scientific, educational, or research purposes and only if the Administrator has determined they can be imported under conditions which will prevent the introduction of HPAI subtype H5N1 into the United States. We believe this is sufficient to prevent the spread of HPAI subtype H5N1 to the United States.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule, as amended by the June 23, 2005 technical amendment, as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

[1] In the rule portion of the interim rule we mistakenly omitted the word ''unprocessed,'' thereby holding both processed and unprocessed bird and poultry products to these restrictions. On June 23, 2005, we published a technical amendment in the **Federal Register** (69 FR 25820–25826, Docket No. 04–011–2) in which we amended § 94.6, paragraph (e), to correct this omission.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ Accordingly, the interim rule amending 9 CFR parts 93, 94 and 95 that was published at 69 FR 25820–25826 on May 10, 2004, as amended by the June 23, 2005, technical amendment that was published at 70 FR 36332–36333, is adopted as a final rule without change.

Done in Washington, DC, this 14th day of July 2005 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–14262 Filed 7–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 36 and 91

[Docket No. FAA–2003–16523]

RIN 2120–AH99

Stage 4 Aircraft Noise Standards; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to the final rule published in the **Federal Register** on July 5, 2005 (70 FR 38742). This document adds two assigned amendment numbers. It also clarifies the Flight Manual Statement of Chapter for equivalency required by § 36.105.

DATES: This correction is effective July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3561; facsimile (202) 267–5594.

Correction

■ In the final rule ''Stage 4 Aircraft Noise Standards'' published in the **Federal Register** on July 5, 2005 (70 FR 38742), make the following corrections:

■ 1. On page 38742, in the first column, in the fourth line of the heading, add amendment numbers as follows: [Docket No. FAA–2003–16526; Amendment Nos. 36–26, 91–288]

§ 36.105 [Corrected]

■ 2. On page 38749, in the second column, in the paragraph entitled ''§ 36.105 Flight Manual Statement of Chapter 4 equivalency'', eleventh line, change ''part 36 Amendment (insert part 36 amendment number)'' to read ''part 36, Amendment 36 (insert part 36 amendment to which the airplane was certificated)''.

Issued in Washington, DC on July 14, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–14248 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21706; Airspace Docket No. 05–ACE–23]

Modification of Class E Airspace; Washington, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Washington, MO. A review of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Washington, MO revealed its legal description is not in proper format and it is not in compliance with established airspace criteria. This airspace area is enlarged and modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing standard instrument approach procedures (SIAPs) to Washington Memorial Airport. This rule also amends the Airport Reference Point (ARP) in the legal description to reflect current data.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 19, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21706/ Airspace Docket No. 05–ACE–23, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Washington, MO. An examination of the Class E airspace area at Washington, MO revealed it does not comply with airspace requirements for recently developed Standard Instrument Approach Procedures (SIAP). Enlargements to this airspace area are necessary in order to comply with airspace requirements set forth in FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The Washington Memorial Airport Airport Reference Point (ARP) is amended to reflect current data and the reference to the Foristell VORTAC is removed. The airspace area is expanded from a 6.3-mile to a 6.4-mile radius of Washington Memorial Airport and extensions are established within 4 miles each side of the 334° bearing from the airport extending from the 6.4-mile radius to 10.8 miles northwest of the airport and within 4 miles each side of the 154° bearing from the airport extending from the 6.4-mile radius to 10.6 miles southeast of the airport. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Washington Memorial Airport. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit and adverse or negative comment is received with the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does not receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21706/Airspace Docket No. 05–ACE–23.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 23232.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Washington Memorial Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40123, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Washington, MO

Washington Memorial Airport, MO

(Lat. 38°35′15″ N., long. 90°59′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Washington Memorial Airport, and within 4 miles each side of the 334° bearing from the airport extending from the 6.4-mile radius to 10.8 miles northwest of the airport, and within 4 miles each side of the 154° bearing from the airport extending from the 6.4-mile radius to 10.6 miles southeast of the airport.

* * * * *

Dated: Issued in Kansas City, MO, on July 11, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14255 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–23–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20446; Airspace Docket No. 05–AAL–04]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects several errors in the airspace descriptions of a final rule published in the **Federal Register** on June 22, 2005 (70 FR 36016), Airspace Docket No. 05–AAL–04.

EFFECTIVE DATE: 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 22, 2005, Airspace Docket No. 05–AAL–04 was published in the **Federal Register** (70 FR 36016), establishing 33 low altitude area navigation routes in Alaska. In that rule, the airspace descriptions contained several data points that were in error. This action corrects those errors.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description for T–223, T–226, T–227, T–229, T–232, and T–250 as published in the **Federal**

Register on June 22, 2005 (70 FR 36016), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

* * * * *

T–223 ANC to EHM [Corrected]

ANC	VOR/DME	(Lat. 61°09′03″ N., long. 150°12′24″ W.)
BLUGA	WP	(Lat. 60°46′22″ N., long. 151°55′07″ W.)
NONDA	WP	(Lat. 60°19′16″ N., long. 153°47′58″ W.)
FAGIN	WP	(Lat. 59°51′56″ N., long. 155°32′43″ W.)
DLG	VOR/DME	(Lat. 58°59′39″ N., long. 158°33′08″ W.)
EHM	NDB	(Lat. 58°39′21″ N., long. 162°04′33″ W.)

* * * * * * *

T–226 JOH to FYU [Corrected]

JOH	VOR/DME	(Lat. 60°28′51″ N., long. 146°35′58″ W.)
FIDAL	WP	(Lat. 60°44′03″ N., long. 146°26′00″ W.)
ROBES	WP	(Lat. 61°05′51″ N., long. 146°11′25″ W.)
KLUNG	WP	(Lat. 61°45′32″ N., long. 145°43′58″ W.)
GKN	VOR/DME	(Lat. 62°09′09″ N., long. 145°27′01″ W.)
DOZEY	WP	(Lat. 62°25′04″ N., long. 145°29′11″ W.)
PAXON	WP	(Lat. 62°58′53″ N., long. 145°33′56″ W.)
DONEL	WP	(Lat. 63°40′22″ N., long. 145°40′00″ W.)
BIG	VORTAC	(Lat. 64°00′16″ N., long. 145°43′02″ W.)
HEXAX	WP	(Lat. 65°59′40″ N., long. 145°23′01″ W.)
FYU	VORTAC	(Lat. 66°34′27″ N., long. 145°16′36″ W.)

T–227 CD to SYA [Corrected]

CD	NDB	(Lat. 55°17′46″ N., long. 162°47′21″ W.)
CIPIM	WP	(Lat. 54°52′50″ N., long. 165°03′15″ W.)
DUT	NDB/DME	(Lat. 53°54′19″ N., long. 166°32′57″ W.)
ADK	NDB/DME	(Lat. 51°52′19″ N., long. 176°40′34″ W.)
JANNT	WP	(Lat. 52°04′18″ N., long. 178°15′37″ W.)
SYA	NDB	(Lat. 52°43′19″ N., long. 174°03′37″ E.)

* * * * * * *

T–229 FAI to PHO [Corrected]

FAI	VORTAC	(Lat. 64°48′00″ N., long. 148°00′43″ W.)
TAL	VOR/DME	(Lat. 65°10′38″ N., long. 152°10′39″ W.)
HSL	VOR/DME	(Lat. 65°42′28″ N., long. 156°21′47″ W.)
WLK	VOR/DME	(Lat. 66°36′00″ N., long. 159°59′30″ W.)
OTZ	VOR/DME	(Lat. 66°53′08″ N., long. 162°32′24″ W.)
PHO	NDB	(Lat. 68°20′41″ N., long. 166°47′51″ W.)

* * * * * * *

T–232 OLARU to BRW [Corrected]

OLARU	WP	(Lat. 62°28′32″ N., long. 140°59′21″ W.)
ORT	VORTAC	(Lat. 62°56′50″ N., long. 141°54′46″ W.)
BIG	VORTAC	(Lat. 64°00′16″ N., long. 145°43′02″ W.)
FAI	VORTAC	(Lat. 64°48′00″ N., long. 148°00′43″ W.)
BTT	VOR/DME	(Lat. 66°54′18″ N., long. 151°32′09″ W.)
BRONX	WP	(Lat. 70°04′08″ N., long. 155°05′56″ W.)
BRW	VOR/DME	(Lat. 71°16′24″ N., long. 156°47′17″ W.)

* * * * * * *

T–250 BET to ULL [Corrected]

BET	VORTAC	(Lat. 60°47′05″ N., long. 161°49′27″ W.)
BANAT	WP	(Lat. 62°12′49″ N., long. 165°40′01″ W.)
ULL	VOR/DME	(Lat. 63°41′32″ N., long. 170°28′12″ W.)

* * * * * * *

Issued in Washington, DC, on July 13, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–14254 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20450; Airspace Docket No. 05–AAL–07]

Establishment of Class E Airspace; Chalkyitsik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airport coordinates contained in a Final Rule that was published in the **Federal Register** on Friday, June 24, 2005 (70 FR 36492). Airspace Docket No. 05–AAL–07.

EFFECTIVE DATE: July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–12564, Airspace Docket No. 05–AAL–07, published on Friday, June 24, 2005 (70 FR 36492), established the Class E airspace at Chalkyitsik, AK. The longitude used for the airport coordinates in the airspace description in the Final Rule was incorrect. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace extending upward from 700 feet or more above the surface of the earth published in the **Federal Register**, Friday, June 24, 2005 (70 FR 36493), (FR Doc 05–15264; page 36493, column 2) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Chalkyitsik, AK [Corrected]

By changing the airport coordinates (Lat. 66°38′42″ N., Long. 143°44′20″ W.) to read (Lat. 66°38′42″ N., Long. 143°44′24″ W.)

Issued in Anchorage, AK, on July 12, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–14251 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20555; Airspace Docket No. 05–AAL–08]

Revision of Class E Airspace; Emmonak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a error in the airport coordinates contained in a Final Rule that was published in the **Federal Register** on Friday, June 24, 2005 (70 FR 36490). Airspace Docket No. 05–AAL–08.

DATES: Effective July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–12566, Airspace Docket No. 05–AAL–08, published on Friday, June 24, 2005 (70 FR 36490), revised the Class E airspace at Emmonak, AK. The latitude used for the airport coordinates in the airspace description in the Final Rule was incorrect. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace extending upward from 700 feet or more above the surface of the earth published in the **Federal Register**, Friday, June 24, 2005 (70 FR 36490), (FR Doc 05–15266; page 36491, column 2) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Emmonak, AK [Corrected]

By changing the airport coordinates (Lat. 62°47′0758″ N., long. 164°29′28″ W.) to read (Lat. 62°47′07″ N., long. 164°29′28″ W.)

Issued in Anchorage, AK, on July 12, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–14257 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21783; Airspace Docket No. 05–ACE–24]

Modification of Class E Airspace; Meade Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of the controlled airspace for Meade Municipal Airport, KS has revealed a discrepancy in the size of the Class E airspace area. In addition, the Meade, KS Non Directional Beacon (NDB) was decommissioned on June 29, 2004 and subsequently the NDB Runway 17 Instrument Approach Procedure was cancelled effective June 8, 2005. This action modifies the Class E5 airspace area beginning at 700 feet above the surface by removing the reference to the Meade, KS NDB from the legal description, deleting the airspace area extension and increasing the radius from a 6.5-mile radius to a 7.5 mile radius of the airport. This actions brings the Class E5 airspace area into compliance with FAA directives.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 19, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21783/ Airspace Docket No. 05–ACE–24, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace beginning at 700 feet above the surface at Meade Municipal Airport, KS to contain Instrument Flight Rule (IFR) operations in controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21783/Airspace Docket No. 05–ACE–24.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 2479); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Meade Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 2459–2463 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Meade, KS

Meade Municipal Airport, KS
(Lat. 37°16′37″ N., long. 100°21′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Meade Municipal Airport.

* * * * *

Issued in Kansas City, MO, on July 11, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14256 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 155 and 156

[USCG–2001–9046]

RIN 1625–AA94

Tank Level or Pressure Monitoring Devices on Single-Hull Tank Ships and Single-Hull Tank Barges Carrying Oil or Oil Residue as Cargo

AGENCY: Coast Guard, DHS.

ACTION: Final rule; suspension of regulations and request for public comment.

SUMMARY: The Coast Guard is suspending for three years the regulations in Title 33 Code of Federal Regulations Parts 155 and 156 for tank level or pressure monitoring (TLPM) devices published in the **Federal Register** of September 17, 2002 (67 FR 58515). Furthermore, we are seeking

public comments on the status of TLPM technology development and other means of detecting leaks from oil cargo tanks into the water.

DATES: This rule is effective August 19, 2005. Comments and related material must reach the Docket Management Facility on or before September 19, 2005.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–9046), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL 401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact LCDR Roger K. Butturini, P.E., Regulatory Development Manager, Office of Standards Evaluation and Development (G–MSR–2), Coast Guard, at 202–267–2857 or e-mail address *RButturini@comdt.uscg.mil.* For technical questions concerning tank level or pressure monitoring devices contact Ms. Dolores Mercier, Technical Program Manager, Systems Engineering Division (G–MSE–3), Coast Guard, telephone 202–267–0658 or e-mail *DMercier@comdt.uscg.mil.* If you have questions on viewing the docket, contact Ms. Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90), Public Law 101–380, directed the Coast Guard to promulgate a number of regulations, including a variety of standards for the design and operation of equipment to reduce the number and severity of tank vessel oil spill incidents. Section 4110 of OPA 90 (46 U.S.C. 3703 note) addressed initiatives to:

- Establish standards for devices that measure oil levels in cargo tanks or devices that monitor cargo tank pressure level (Functionally, these tank level or pressure monitoring (TLPM) devices measure changes in cargo volume, thereby detecting possible oil leaks into the water), and
- Issue regulations establishing requirements concerning the use of these devices on tank vessels carrying oil or oil residue as cargo.

In May of 1991, the Coast Guard published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM) (56 FR 21116) seeking public comments related to TLPM devices on tank vessels carrying oil cargo. In August of 1992, the Volpe National Transportation Systems Center completed a feasibility study (Volpe study) on TLPM devices for the Coast Guard Marine Technical and Hazardous Materials Division at Coast Guard Headquarters. Some important features of the Volpe study were:

- Identifying ship motions, sloshing, air pocketing, and the formation of foam in cargo tanks as the major obstacles to accurate tank level detection;
- Finding that the attainable accuracy with electronic surface level sensing systems is within 2% of the actual cargo level; and
- Concluding that the high cost of installing a modern tank level sensing system will naturally lead to development of alternative approaches to leak detection and alarming.

In January of 1993, we asked for public comment on the study via another **Federal Register** Notice (58 FR 7292) and we held a public meeting at Coast Guard Headquarters in December 1994 to discuss proposed standards and rules for TLPMs (59 FR 58810). As a result of the comments, in 1995 we published a Notice of Proposed Rulemaking (NPRM) to establish minimum performance standards for TLPMs (60 FR 43427).

In 1997, we published a temporary rule (62 FR 14828) on performance standards for TLPM devices. In the temporary rule, we advised the public of our conclusion that current technology could not meet the sensitivity requirements proposed in the NPRM and requested the submission of new or modified TLPM devices that could meet the performance standards set out in the rule. It was our intent to evaluate submitted devices and confirm that they met the performance standards required by the temporary rule. We would, then, have assessed the costs and benefits offered by these devices and used that information to decide whether or not to develop regulations on the installation and use of TLPMs. At the time the temporary rule expired in April 1999, no devices had been submitted to us for evaluation. In our regulatory analysis, we estimated the cost of the regulation as $166.4 million over the 12-year period of analysis between 2003 and 2014. Likewise, we estimated that the regulation would result in a benefit of 874 barrels of oil not spilled over the period of analysis. The cost-effectiveness ratio was calculated by dividing the cost by the projected benefits (if TLPM technology was readily available), resulting in a ratio of $190,000 per barrel of oil not spilled. Therefore, based on the absence of equipment that would satisfy our proposed requirements, the estimated costs of system installations versus the projected benefits realized if TLPM device technology was readily available, and the miniscule contribution TLPMs would make to prevent oil pollution compared to the rest of the OPA 90 initiatives, we decided not to proceed with regulations that required the use of TLPMs on single-hull tank vessels.

In 1999, Bluewater Network and Ocean Advocates brought suit in the U.S. Court of Appeals for the District of Columbia Circuit. In their suit, the petitioners asked the Court for a Writ of Mandamus ordering us to promulgate TLPM regulations. In December of 2000, the Court agreed with the petitioners on this item and directed the Coast Guard to promptly promulgate regulations setting TLPM standards and requiring use of TLPMs on tank vessels.

On October 1, 2001, we published in the **Federal Register**(66 FR 49877) another NPRM entitled ''Tank Level or Pressure Monitoring Devices.'' And, in September 2002, we published the Final Rule for ''Tank Level or Pressure Monitoring Devices'' (67 FR 58515). This Final Rule detailed TLPM performance criteria and described the vessels required to install and use TLPMs by 2007. Between publication of the Final Rule in September 2002 and June 2005, we identified no devices meeting the performance criteria established in the final rule, and none have been submitted by industry for our evaluation.

In 2004, Congress amended the language of section 4110 of OPA 90 in the Coast Guard and Marine Transportation Authorization Act of

2004 (Pub. L. 108–293). Where the original text of OPA 90 mandated rules for TLPMs, the amended language now allows the Coast Guard discretion and mandates that the Coast Guard study leak detection alternatives. As a result, we have the opportunity to revisit the feasibility and practicality of TLPMs on single-hull tank vessels and also to examine other means of detecting leaks into the water. Therefore, we are suspending for three years the rules previously published in 33 CFR parts 155 and 156 that contain requirements for the use of TLPMs.

As Congress has directed that we conduct a study of other means of detecting leaks, we are also using this final rule to solicit detailed public comment on the current state of TLPM technology and other means for detecting leaks from oil cargo tanks into the water. The most helpful comments will be those that include details about

- Physical principles of operation,
- Degree of experience with actual use,
- Performance and limitations,
- Size, weight, and cost,
- Operational complexity,
- Power requirements,
- Capacity to operate in a dynamic environment, including an explosive atmosphere, and
- A point of contact.

In submitting comments on these issues, recognize that we encourage ideas on creative and innovative approaches. The following questions should help guide your comments:

A. What methods or equipment are currently available to detect leaks from oil cargo tanks into the water and what do they cost?

B. What methods or equipment are currently under development and may be available to detect leaks from oil cargo tanks into the water in the next five years and what do they cost?

C. What methods or equipment are under development to detect leaks from oil cargo tanks into the water but will not be available in the next five years?

D. What is the current state of technology for Tank Level or Pressure Monitoring equipment?

E. In what scenarios (e.g., grounding, collision, structural failures, and material wastage) will TLPMs and the possible alternatives prove the most useful?

F. Do the methods or types of equipment discussed in this rulemaking have uses other than leak detection from oil cargo tanks into the water?

G. Are the current performance standards in 33 CFR part 155.490 reasonable and effective?

H. Should we consider special circumstances for barges being moved by tugs and towboats?

I. Should we consider special circumstances for integrated tug/barge combinations?

J. Should we consider special circumstances for vessels that have cargo or cargo residue aboard but which are unattended, such as fleeted barges?

K. Are methods or equipment being applied for similar purposes in other industries (e.g., the aerospace, rail, military, or over-the-road truck industries) that merit investigation for use aboard vessels?

L. Do emerging industries such as Microelectromechanical Systems (MEMS) or nanotechnology have the potential to provide low-cost solutions for detecting leaks from cargo oil tanks into the water?

Regulatory Evaluation

The events that led to publication of the original rules for TLPMs in 33 CFR parts 155 and 156 suggest that this final rule should be considered a ''significant regulatory action'' because it will likely generate a high level of public interest. We expect that the regulated industry and environmental groups will submit numerous comments supporting both sides of the argument for requiring TLPMs on single-hulled tank vessels. The Office of Management and Budget has reviewed it under that premise and agrees that this rule is ''significant.''

In 2002, we estimated the total cost to the affected industries of implementing the measures outlined in the final rule would be $166.4 million over the 12-year period of analysis between 2003 and 2014. No devices have been submitted to the Coast Guard for approval as a TLPM device. Our research indicates that there are currently no devices that meet the performance requirements of 33 CFR part 150.490 for a TLPM device. While some vessels may have equipment installed to monitor the tank level or pressure, our research indicates these devices do not meet the performance requirements of 33 CFR part 150.490 and are not TLPM devices as discussed in this and previous rulemakings. Since this suspension overlaps the remaining phase-in period, we believe this notice will render the entire $166.4 million in implementation costs to industry unnecessary while the rule is suspended.

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.

We conclude that suspending the performance standards for TLPM devices and the requirements for their use will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this final 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 want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. 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 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.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's

obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). This rule suspending previously published rules on performance standards and use of TLPM devices falls into the category of vessel equipment and operation. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

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 the preamble.

Taking of Private Property

This 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 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. This rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

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 the 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 we 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) of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADRESSSES.**

List of Subjects

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR parts 155 and 156 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for 33 CFR part 155 and the note following citation continue to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

§ 155.200 [Amended]

■ 2. In § 155.200, suspend the definition for ''Sea State 5'' from August 19, 2005 until July 21, 2008.

§ 155.490 [Suspended]

■ 3. Section 155.490 is suspended from August 19, 2005 until July 21, 2008.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

■ 4. The authority citation for 33 CFR part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

§ 156.120 [Amended]

■ 5. In §156.120, suspend paragraph (ee) from August 19, 2005 until July 21, 2008.

Dated: July 12, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 05–14246 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0115; FRL–7725–1]

Two Isopropylamine Salts of Alkyl C_4 and Alkyl C_{8-10} Ethoxyphosphate Esters; Exemption from the Requirement of a Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of June 1, 2005, establishing two tolerance exemptions for two isopropylamine salts. This document is being issued to correct the CAS Reg. No. for one of those salts, 2-propanamine, compound with α-phosphono-ω-butoxypoly (oxy-1,2-ethanediyl) (2:1).

DATES: This final rule is effective on July 20, 2005.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

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

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

II. What Does this Correction Do?

A tolerance exemption for 2-propanamine, compound with α-phosphono-ω-butoxypoly (oxy-1,2-ethanediyl) (2:1) was established in the **Federal Register** of June 1, 2005, (70 FR 31365) (FRL–7712–1). In that document the CAS Registration No. (CAS Reg. No.) in the tolerance exemption expression and in the preamble was incorrectly listed as 43140–31–2. The valid CAS Reg. No. should be 431040–31–2.

The CAS Reg. No. now appearing as ''43140–31–2'' is corrected to read ''431040–31–2'' on the following pages of the preamble of the final rule published on June 1, 2005 (FR Doc. 05–10845):

1. On page 31365, in the third column, under Unit II., in the second paragraph, in the eighth line.

2. On page 31368, in the first column, under Unit VIII., seventh line from the bottom.

3. On page 31368, in the second column, under Unit X., in the sixth line.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 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 final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting a typographical error in a previously-published final rule in the Chemical Abstracts Service (CAS) numerical designation for a chemical.

A chemical can be described by more than one name. But, the CAS Reg No. is the most unique identifier for a chemical substance. CAS Reg. Nos. are assigned by a specific set of procedures which allow for a verification check. (See *http://www.cas.org/EO/checkdig.html*). A CAS Reg. No. in which a zero was inadvertently left out fails the verification procedure, and thus is not recognized as a valid identifier.

The CAS Reg No. given in these actions had a typographical error but should not have been a source of confusion since the typographical error resulted in the CAS Reg. No. being invalid not in it identifying a different chemical. Moreover, the text of the preamble in the final rule clearly identified the chemical by its correct chemical nomenclature.

Notice and public procedures are unnecessary for such a minor change. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule implements a technical correction to the CFR., and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a significant regulatory action subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements 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).

Since the Agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

This action will not result in environmental justice related issues and does not, therefore, 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).

Since this action is not a significant regulatory action as defined by Executive Order 12866; it does not require 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), and 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 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).

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 8, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.920, by revising the entry for 2-Propanamine, compound with α-phosphono-ω-butoxypoly (oxy-1,2-ethanediyl) (2:1), in the table, to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
2-Propanamine, compound with α-phosphono-ω-butoxypoly (oxy-1,2-ethanediyl) (2:1). (CAS Reg. No. 431040–31–2).	Not more than 15% in the formulated product.	Surfactant
* * *	* * *	* * *

[FR Doc. 05–13979 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0170; FRL–7723–3]

Etoxazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of etoxazole in or on grapes and tree nuts, including pistachios. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 20, 2005. Objections and requests for hearings must be received on or before September 19, 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–2005–0170. 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: Kable Davis, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0415; e-mail address: *davis.kable@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.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of September 26, 2003 (68 FR 55485) (FRL–7324–8), 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 3F6739) by Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, P.O. Box 8025, Walnut Creek, CA 94596. The petition requested that 40 CFR 180.593 be amended by establishing a tolerance for residues of the insecticide etoxazole, [2-(2, 6-difluorophenyl)-4-[4-(1, 1-dimethylethyl)-2-ethoxyphenyl]-4, 5-dihydrooxazole], in or on grapes at 0.50 parts per million (ppm), raisins at 1.5 ppm, tree nuts (Crop Group 14), including pistachios at 0.01 ppm, and almond, hulls at 2.0 ppm. That notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. A comment was received from a private citizen who challenged the value of using animal testing for evaluating pesticide toxicity. This commenter's objections have been addressed in prior rulemaking documents in the *Federal Register* of October 29, 2004 (69 FR 63083) (FRL–7681–9).

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 of November 26, 1997 (62 FR 62961) (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 etoxazole on grapes at 0.50 ppm, raisins at 1.5 ppm, tree nuts (Crop Group 14), including pistachios at 0.01 ppm, and almond, hulls at 2.0 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 etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of September 26, 2003 (68 FR 55485) (FRL–7324–1).

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 of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors (UF);'' the ''special FQPA safety factor;'' and, the ''default FQPA safety factor.'' By the term ''traditional UF,'' EPA is referring to those additional UFs used prior to FQPA passage to account for database deficiencies. These traditional UFs 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 UF 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 (aRfD or cRfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional UFs 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.

A summary of the toxicological endpoints for etoxazole used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 26, 2003 (68 FR 55485) (FRL–7324–8).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.593) for the residues of etoxazole in or on a variety of raw agricultural commodities. The tolerances include: Apple, wet pomace 0.50 ppm, cattle fat 0.02 ppm, cattle liver 0.01 ppm, cotton gin byproducts 1.0 ppm, cotton undelinted seed 0.05 ppm, pome fruit (group 11) 0.20 ppm, goat fat 0.02 ppm, goat liver 0.01 ppm, horse fat 0.02 ppm, horse liver 0.01 ppm, milk fat 0.01 ppm, sheep fat 0.02 ppm, sheep liver 0.01 ppm, strawberry 0.50 ppm, tangerine 0.10 ppm. Risk assessments were conducted by EPA to assess dietary exposures from etoxazole in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. An endpoint of concern attributable to a single oral dose was not selected for either the general U.S. population (including infants and children) or the females 13–50 years old population subgroup for etoxazole; therefore, an acute dietary exposure analysis was not performed. EPA evaluated the suitability of the developmental toxicity study in rabbits in which the developmental NOAEL of 200 milligram/kilogram/day (mg/kg/day) is based upon increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs (skeletal variations) in the fetuses at the LOAEL of 1,000 mg/kg/day (limit dose). Although these developmental effects may be attributed to a single dose, EPA concluded that these effects are minor in magnitude and were observed only at the limit dose (1,000 mg/kg/day).

Therefore, quantitation of the acute risk was not performed.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM™/FCID), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The assessment assumed that 100% of the proposed crops were treated and that all treated crops and livestock had residues of concern at the tolerance level.

iii. *Cancer.* EPA has determined that etoxazole is not likely to be a human carcinogen and EPA therefore, does not expect it to pose a cancer risk. As a result, a quantitative cancer dietary exposure analysis was not performed.

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

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The 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 etoxazole they are further discussed in the aggregate risk sections in this Unit.

Based on the FIRST and SCI-GROW models, the EECs of etoxazole for chronic exposures are estimated to be 1.77 parts per billion (ppb) for surface water and 0.242 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).

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

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. There is qualitative evidence of increased susceptibility following exposure to etoxazole in the rat reproduction study. Therefore, EPA performed a Degree of Concern Analysis to determine the LOC for the effects observed when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of this chemical. If residual uncertainties are identified, EPA examines whether these residual uncertainties can be addressed by a special FQPA safety factor and, if so, the size of the factor needed. In performing the Degree of Concern Analysis, EPA noted that the effects in the pups in the rat reproduction study are well-characterized with a clear NOAEL. In addition, the pup effects occur at the same dose as maternal toxicity. Furthermore, the doses selected for various risk assessment scenarios are lower than the doses that caused off spring toxicity. There are no residual uncertainties for prenatal/postnatal toxicity in this study. Therefore, although there is evidence of increased qualitative susceptibility in the rat reproduction study, the concern is low. For the reasons stated above, EPA has concluded that there is low concern for prenatal and/or postnatal toxicity resulting from exposure to etoxazole.

3. *Conclusion*. There is a complete toxicity data base for etoxazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed for the following reasons. The toxicological data base is complete for FQPA assessment and there is low concern for prenatal and/or postnatal toxicity resulting from exposure to etoxazole. The chronic dietary food exposure assessment assumed that 100% of the proposed crops were treated and that all treated crops and livestock had residues of concern at the tolerance level. By using these screening-level assumptions, actual exposures/risks will not be underestimated. In addition, the dietary drinking water assessment utilized modeling results which included conservative assumptions for the parent and all degradates of concern. Since conservative assumptions were used in the water models where environmental fate data are lacking, the water exposure assessment will not underestimate the potential risks for infants, and children. Finally, there are no registered or proposed residential uses for etoxazole.

E. Aggregate Risks and Determination of Safety

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

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by 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.

1. *Acute risk*. An endpoint of concern attributable to a single oral dose was not identified in the hazard data base for either the general U.S. population (including infants and children) or the females 13–50 years old population subgroup. Therefore, no acute risk is expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to etoxazole from food will utilize 1% of the cPAD for the U.S. population, 4% of the cPAD for all infants (<1 year old), and 8% of the cPAD for children 1–2 years old. There are no residential uses for etoxazole that result in chronic residential exposure to etoxazole. In addition, there is potential for chronic dietary exposure to etoxazole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 1:

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.046	1	1.77	0.242	1,600
All infants<1 year old)	0.046	4	1.77	0.242	440
Children (1–2 years old)	0.046	8	1.77	0.242	420
Children (3–5 years old)	0.046	5	1.77	0.242	440
Children (6–12 years old)	0.046	2	1.77	0.242	450
Youth (13–19 years old)	0.046	1	1.77	0.242	1,400
Adults (20–49 years old)	0.046	1	1.77	0.242	1,600
Females (13–49 years old)	0.046	1	1.77	0.242	1,400
Adults (50+ years old)	0.046	1	1.77	0.242	1,600

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

Etoxazole 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 aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Etoxazole 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*. Etoxazole has been classified as a ''not likely human carcinogen.'' Therefore, etoxazole is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

No Codex, Canadian or Mexican maximum residue limits have been established for residues of etoxazole.

V. Conclusion

Therefore, the tolerance is established for residues of etoxazole, [2-(2, 6-difluorophenyl)-4-[4-(1, 1-dimethylethyl)-2-ethoxyphenyl]-4, 5-dihydrooxazole], in or on grapes at 0.50 ppm, raisins at 1.5 ppm, tree nuts (Crop Group 14), including pistachios at 0.01 ppm, and almond, hulls at 2.0 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–2005–0170 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 September 19, 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–2005–0170, 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 FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

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

List of Subjects in 40 CFR Part 180

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

Dated: July 12, 2005.

Lois Ann 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 180.593 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	2.0
* * * * *	
Grape	0.50 ppm
Grape, raisin	1.5 ppm
* * * * *	
Nut, tree, group 14	0.01 ppm
Pistachio	0.01 ppm
* * * * *	

[FR Doc. 05–14284 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7939–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Mallard Bay Landing Bulk Plant Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a Direct Final Notice of Deletion of the Mallard Bay Landing Bulk Plant Superfund Site (Site), located northeast of Grand Chenier in Cameron Parish, Louisiana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This Direct Final Notice of Deletion will be effective September 19, 2005, unless EPA receives adverse comments by August 19, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Vermilion Parish Library, 605 McMurtry Street, Gueydan, Louisiana 70542–4140, (337) 536–6781, Monday through Friday 10 a.m. to 5 p.m., Saturday 9 a.m. to 12 p.m.; Louisiana Department of Environmental Quality, Public Records Center, 602 North Fifth Street, Baton Rouge, LA 70802, (225) 219–3168, Monday through Friday 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michael A. Hebert, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8315 or 1–800–533–3508 (*hebert.michael@epa.gov*).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

The EPA Region 6 office is publishing this Direct Final Notice of Deletion of the Mallard Bay Landing Bulk Plant Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 19, 2005, unless EPA receives adverse comments by August 19, 2005, on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Mallard Bay Landing Bulk Plant Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or,

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed or responsible party actions. If future conditions warrant, Section 300.425(e)(3) of the NCP provides that Fund-financed remedial actions may be taken at sites deleted from the NPL.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with LDEQ on the deletion of the Site from the NPL prior to developing this Direct Final Notice of Deletion.

(2) LDEQ concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this Direct Final Notice of Deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Mallard Bay Landing Bulk Plant (MBLBP) Site is located 23 miles northeast of Grand Chenier in Cameron Parish, Louisiana; about 8 miles southwest of Gueydan in Vermillion Parish, Louisiana; and about 15 miles south of Jennings in Jefferson Davis Parish, Louisiana. The geographic center of the Site is at latitude 29°56′27″ north and longitude 92°39′21″ west and the address is 2240 South Talen's Landing Road in Cameron Parish.

Site History

In early 1980 through 1983, the MBLBP facility operated as a crude oil refinery. Mixed crude oil was refined to produce naphtha, diesel fuel, and No. 6 fuel oil. In August 1985, under new ownership, the facility resumed crude oil refining operations and continued operations until early 1987, when the owners filed for bankruptcy and the facility was closed. In 1987, the LDEQ-Hazardous Waste Division conducted a site inspection, in response to the bankruptcy proceedings. LDEQ noted that the facility had allegedly accepted hazardous waste fuels for which it was not permitted and had also received and attempted to process styrene, a compound commonly used to produce plastics.

The facility was actively monitored by the Louisiana Department of Natural Resources (LDNR) and LDEQ during its operational years. Based on information obtained during a 1993 site inspection, LDEQ referred the site to EPA in June 1993. On July 30, 1996, EPA organized and conducted a removal assessment, which included the sampling and analysis of above-ground storage tanks (ASTs) and drums located on-site, as well as an evaluation of appropriate treatment and disposal options. From January to March 1999, EPA oversaw the removal and off-site disposal of approximately 866,304 gallons of oil/waste material from on-site ASTs. An additional 152,392 gallons of thick, sludge-like oil/waste material could not be removed from some ASTs due to its viscous consistency. Chemical analyses of this remaining tank waste revealed elevated concentrations of styrene, benzene, toluene, ethylbenzene, xylenes, 2-methylnaphthalene, naphthalene, arsenic, barium, chromium, copper, lead, manganese, mercury, nickel, vanadium, and zinc. Sediment samples collected from the wetlands adjacent to the area containing the tank waste revealed elevated levels of arsenic, barium, copper, manganese, mercury, nickel, vanadium, and zinc.

On July 27, 2000, EPA formally announced that it was adding the MBLBP site to the National Priorities List (NPL), making it eligible for funding under EPA's Superfund program.

Remedial Investigation and Feasibility Study (RI/FS)

From late 2000 to early 2002, EPA conducted field sampling and investigation activities at the MBLBP Site including collection and analyses of soil, sediment, surface water, ground water, waste materials, and asbestos-containing materials to determine if

significant pollutant concentrations were present. The Remedial Investigation (RI) and Feasability Study (FS) identified the types, quantities, and locations of contaminants found in these samples. The sample results generally indicated that the Site had been impacted by volatile, semi-volatile, and metal constituents commonly found at oil refinery facilities.

Results

- Metals and semi-volatile contamination was found in soils at the site and generally confined to the top 1 foot of soil.
- Ground water contamination was very intermittent across the site in the first water bearing zone.
- The only organics detected above screening levels were in the sediments within the west tank battery.
- No organics were detected in surface waters above screening levels.
- Metals were detected in surface water samples from the tank battery and treatment ponds on the west side of the Site.
- Waste materials and two above ground storage tanks contained high concentrations (relative to screening levels) of metals and organics.
- Asbestos-containing material was identified on some above ground piping and other process units.

Characterization of Risk

As part of the RI/FS, EPA conducted a human health risk assessment (HHRA) and an ecological risk assessment (ERA). The assessments estimated the probability and magnitude of potential adverse human health and environmental effects from exposure to contaminants associated with the Site assuming no remedial action was taken. They provided the basis for taking action and identified the contaminants and exposure pathways that need to be addressed by the remedial action. A review of the analytical data obtained during the field investigation revealed constituents in the process sludge contained in onsite tanks, at hazardous concentrations. Because the hazardous sludges were thus established as a risk, they were excluded from the HHRA and ERA to prevent bias in the risk assessment of the remaining media at the Site.

The MBLBP Site is an industrial facility in a rural area of Cameron Parish with predominantly undeveloped properties and other industrial facilities surrounding the Site. Therefore, the reasonably anticipated future land use for the offsite and onsite areas is industrial. However, to evaluate risks, should future residential development occur onsite, a hypothetical future residential use evaluation was also conducted. Based on the future residential scenario, adult and child residents were identified as potential receptors, and for the industrial scenario, adult workers were identified as potential receptors.

The risk assessment indicated that hypothetical future exposures to ground water were predicted to result in cancer risk probabilities and noncancer hazards above acceptable risk levels. In addition to ground water exposures, hypothetical future exposures to a small area of the surface soil at the site were predicted to result in non-cancer hazards exceeding acceptable risk levels.

The ERA focused on the on-site terrestrial habitat and the aquatic habitat provided by onsite holding ponds and drainage pathways leading offsite. No risks to aquatic receptors were identified in the assessment. Edible parts (fruits and leaves) of the plants as well as soils were determined to not be toxic to soil invertebrates, mammals, and birds. Therefore, there were no significant ecological risks identified in the ERA.

Remedial Action Objectives

Based upon the HHRA and the ERA, the following remedial action objectives were developed for the site:

- Treat process sludge contained within vessels and piping so that it may be safely removed and properly disposed offsite, to no longer pose a threat to human health and the environment as a characteristically hazardous waste,
- Properly remove and dispose of asbestos containing materials,
- Isolate and remove shallow contaminated soils,
- Demolish, dispose of, or otherwise prohibit access to all existing buildings, piping, and tanks.

Record of Decision Findings

The EPA signed a Record of Decision (ROD) on March 12, 2003, with the remedial action addressing the Site as one operable unit. The ROD addressed the wastes left on-site after the previous removal action as well as any contaminated media. The ROD selected solidification/stabilization and off-site disposal of tank sludge and hot spot soils; removal and off-site disposal of asbestos-containing material; demolition, decontamination, and off-site disposal or recycling of existing on-site buildings, tanks, and piping; and removal and off-site disposal of stockpile wastes and drums remaining from previous investigations. Ground water would be monitored during remedial activities to assess the need for institutional controls.

EPA determined during the design preparations of the selected remedy that the treatment method for sludge wastes at the Site was not sufficient to meet appropriate waste disposal regulations. On May 30, 2003, TetraTech EM Inc. completed a Supplemental Feasibility Report describing alternative remediation disposal methods for the sludge wastes. A Revised Proposed Plan was issued by EPA on June 6, 2003, for a 30 day public comment period which provided a detailed summary and discussion of various remedial alternatives to address the sludge wastes at the Site. No members of the public were in attendance at the public meeting held of June 17, 2003, nor were any comments received by EPA from the public concerning the revised proposed plan. The LDEQ did submit comments related to the proposed plan and concurred with the preferred alternative. A ROD Amendment was signed on July 10, 2003, which selected excavation/extraction and off-site energy recovery/thermal destruction as the remedial alternative to address the sludge wastes at the Site.

Design Criteria

On February 21, 2003, EPA issued a work assignment to TetraTech EM Inc. to perform the Remedial Design (RD). The Fund-lead RD was completed on May 5, 2003. The project was also a Fund-lead construction.

Between March 2003 and June 2003, EPA and the State (*i.e.*, LDEQ) negotiated a State Superfund Contract (SSC). The SSC was reviewed before a final contract was signed on June 10, 2003. The first amendment to the SSC was signed on July 17, 2003, with a second and final amendment being signed on August 14, 2003. The SSC provided that the State pay 10% of the remedial action costs.

The Remedial Design included the following components:

- Approximately 152,400 gallons of hazardous tank sludge located in aboveground storage tanks (ASTs) will be extracted and stabilized by adding and mixing a chemical reagent. Once the on-site contaminated material is stabilized and sampled to ensure Toxicity Characteristic Leaching Procedure (TCLP) performance standards are met, the mixture will be transported to an off-site landfill.
- Approximately 220 cubic yards of soil will be excavated from hot spot location WE04, as well as about 857 cubic yards from underneath the ASTs. This material will be stabilized by adding and mixing a chemical reagent.

Once the consolidated contaminated material is stabilized and sampled to ensure TCLP performance standards are met, the mixture will be transported to an off-site landfill.

- About 12,000 linear feet of aboveground and underground piping will be cleaned/removed/recycled off-site or cleaned and abandoned in-place.
- About 5,000 square feet of aboveground building structures will be dismantled and demolished and properly disposed or recycled off-site.
- All waste materials in stockpiles and drums that were left from previous investigations will be removed and properly disposed off-site.
- About 1,044 tons of on-site tanks will be demolished, de-contaminated and stored in a temporary storage area until transported to a scrap yard for recycling or off-site disposal.
- Approximately 210 linear feet of asbestos-containing material (ACM) contained on the piping and additional ACM located in the small heater area of the East Facility will be abated prior to the demolition of the facility and disposed off-site.
- Surface water located in treatment ponds on the West Facility will be discharged into an adjacent drainage ditch. All on-site ponds will be partially filled with concrete stockpile recovered from the Site, then backfilled with soil from the earthen berms presently surrounding them.
- The Site will be graded and seeded with indigenous grasses to prevent water accumulation.
- During remedial action, efforts will be made to control dust to limit the amount of materials that may migrate off-site.
- Ground water will be monitored during remedial activities to assess the need for institutional controls.

The RD was modified concerning the disposition of the 152,400 gallons of hazardous tank sludge. Immediately prior to the initiation of the Remedial Action (RA) at the Site, it was determined that the sludge stabilization treatment method was not sufficient to meet appropriate waste disposal regulations. The revised sludge treatment alternative of utilizing the sludge as a supplemental fuel source at an off-site thermal destruction facility was the subject of the Revised Proposed Plan of June 6, 2003, and the ROD Amendment of July 10, 2003.

Remedial Construction Activities

The EPA issued Remedial Action (RA) work assignment to the Response Action Contract (RAC) contractor on June 2, 2003, with on-site RA construction beginning on June 8, 2003.

The 2003 Remedial Action at the Site included the following:

- 200,150 gallons of sludge were extracted from the Site and utilized as a supplemental fuel source at an off-site thermal destruction facility.
- 895 tons of on-site tanks, piping, and vessels were demolished, removed, decontaminated, and recycled or disposed at an off-site facility.
- 1120 cubic yards of contaminated soil were excavated and disposed in an appropriate off-site landfill.
- 5875 feet of 10 inch, 6 inch, and 4 inch pipe were demolished, cleaned out (combined with sludge wastes), and removed.
- 7785 feet of 10 inch, 6 inch, and 4 inch pipe were evacuated and abandoned in place.
- 4000 square feet of above ground buildings were dismantled, demolished, and disposed or recycled off-site.
- 21 cubic yards of asbestos-containing material were abated during demolition activities.
- Surface water from on-site ponds meeting State discharge standards was discharged into an adjacent drainage canal.
- Ground water met all Federal and State standards, so no further action was needed concerning ground water at the Site.
- The Site was graded to prevent water accumulation.

The EPA and the State of Louisiana conducted the RA as planned, and completed a pre-final inspection on September 8, 2003. During the inspection, several minor punch list items were identified, however, the RA activities completed according to design specifications were:

- Site preparation activities:
- Excavation and disposal of on-site contaminated soil;
- Removal and disposal of remaining waste materials;
- Treatment and discharge of surface water;
- Removal and disposal of above ground/under ground tanks;
- Removal and disposal of above ground/under ground piping;
- Removal and disposal of above ground structures;
- Removal and disposal of asbestos-containing materials;
- Analysis of confirmation samples from all excavation areas;
- Sampling and evaluation of ground water.

Activities identified in the pre-final inspection included decontamination and return of containers utilized for fuel blending of the sludge waste materials, general site grading and restoration activities, and plugging and abandonment of on-site ground water monitoring wells. These activities were scheduled to be completed by the end of September 2003. The EPA conducted a final inspection on October 2, 2003, at which time all RA field activities had been completed.

On August 23, 2004, EPA signed a Remedial Action Report signifying successful completion of construction activities. No specified reuse of the property has been established at this time. While there has been some interest in purchase of the property by local individuals/organizations, no purchase agreements have been developed nor finalized.

The remedial actions set forth in the ROD and the ROD Amendment were consistent with, and complied with, the Superfund Amendments and Reauthorization Act (SARA) of 1986, Public Law 99–499, which substantially amended CERCLA, 42 U.S.C. 9601 *et seq.*, and the National Contingency Plan (NCP). SARA codified many of the existing requirements under the then existing NCP (1985), as well as adding, among other things, a new section 121 to CERCLA, which provided direction for selection of remedial actions compliant with applicable or relevant and appropriate Federal, State, and local laws regulations and requirements (Applicable or Relevant and Appropriate Requirements) 42 U.S.C. 9621.

Five-Year Review

Upon completion of this remedy, no hazardous substances remain at the Site above levels that prevent unlimited use and unrestricted exposure. Since no additional operation and maintenance activities are needed, the EPA does not need to conduct a five-year review pursuant to CERCLA Section 121(c) and as provided in the current guidance on Five Year Reviews: OSWER Directive 9355.7–03B–P, Comprehensive Five-Year Review Guidance (June 2001).

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Louisiana, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under

CERCLA, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 19, 2005, unless EPA receives adverse comments by August 19, 2005. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 8, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Louisiana (''LA'') by removing the site name ''Mallard Bay Landing Bulk Plant''.

[FR Doc. 05–14067 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1702, MB Docket No. 00–104, RM–9812]

Digital Television Broadcast Service; Oklahoma, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Viacom Stations Group of OKC LLC, substitutes DTV channel 40 for DTV channel 42 with maximized facilities. *See* 65 FR 37752, June 16, 2000, and *also see* Further Notice of Proposed Rule Making, 68 FR 43702, July 24, 2003. DTV channel 40 can be allotted to Oklahoma City, Oklahoma, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35–35–52 N. and 97–29–22 W. with a power of 1000, HAAT of 475 meters and with a DTV service population of 1304 thousand. With this action, this proceeding is terminated.

DATES: Effective August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 00–104, adopted June 20, 2005, and released July 8, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com*.

This document does not contain (new or modified) information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 42 and adding DTV channel 40 at Oklahoma City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–14237 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1735; MB Docket No. 05–3; RM–11132]

Radio Broadcasting Services; Grand Isle and St. Albans, VT and Tupper Lake, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 70 FR 3667 (January 26, 2005), this *Report and Order* upgrades Channel 272A, Station WLFE–FM, St. Albans, Vermont, to Channel 272C3, reallots Channel 272C3 to Grand Isle, Vermont, and modifies Station WLFE–FM's license accordingly. To accommodate the foregoing changes, this *Report And Order* substitutes Channel 271C3 for Channel 272A at FM Station WRGR, Tupper Lake, New York. The coordinates for Channel 272C3 at Grand Isle, Vermont are 44–44–07 NL and 73–30–57 WL, with a site restriction of 17.4 kilometers (10.8 miles) west of Grand Isle. The coordinates for Channel 271C3 at Tupper Lake, New York, are 44–07–21 NL and 74–31–52 WL, with a site restriction of 12.6 kilometers (7.8 miles) southwest of Tupper Lake.

DATES: Effective August 8, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–3, adopted June 22, 2005, and released June 24, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402,

Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 272A and adding Channel 271C3 to Tupper Lake.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14054 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1734; MB Docket No. 04–328; RM–11046, RM–11235]

Radio Broadcasting Services; Americus and Oglethorpe, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 69 FR 54614 (September 9, 2004), this *Report and Order* grants the proposal to allot Channel 295A to Americus, Georgia, and grants a request to dismiss a counterproposal to allot Channel 295 To Oglethorpe, Georgia. The coordinates for Channel 295A at Americus, Georgia are 32–04–51 North Latitude and 84–15–20 West Longitude, with a site restriction of 2.4 kilometers (1.5 miles) northwest of Americus, Georgia.

DATES: Effective August 8, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–328, adopted June 22, 2005, and released June 24, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. Section 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 295A at Americus.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 05–14055 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1858; MB Docket No. 05–117, RM–11182; MB Docket No. 05–119, RM–11184]

Radio Broadcasting Services; Colfax, LA, and Moody, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a multi-docket *Notice of Proposed Rulemaking*, 70 FR 17047 (April 4, 2005) this *Report and Order* allots new FM channels in two communities, including Colfax, Louisiana and Moody, Texas. The Audio Division, at the request of Charles Crawford, allots Channel 267A at Colfax, Louisiana, as the community's first local aural transmission service. Channel 267A can be allotted to Colfax in compliance with the Commission's technical requirements with a site restriction of 13.0 kilometers (8.1 miles) southwest of Colfax, Louisiana. The reference coordinates for Channel 267A at Colfax are 31–27–53 North Latitude and 92–49–44 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Effective August 15, 2005. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

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

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 05–117 and 05–119, adopted June 29, 2005, and released July 1, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Charles Crawford, allots Channel 256A at Moody, Texas, as the community's first local aural transmission service. Channel 256A can be allotted to Moody in compliance with the Commission's technical requirements with a site restriction of 8.7 kilometers (5.4 miles) west of Moody. The reference coordinates for Channel 256A at Moody are 31–17–03 North Latitude and 97–26–35 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Colfax, Channel 267A.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Moody, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14236 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[ET Docket No. 04–151, WT Docket No. 05–96, ET Docket No. 02–380, and ET Docket No. 98–237; FCC 05–56]

Wireless Operations in the 3650–3700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction of effective date.

SUMMARY: On May 11, 2005, the Commission published final rules in the Report and Order and Memorandum Opinion and Order. The Report and Order adopted rules that provided for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a contention-based protocol, in the 3650–3700 MHz band (3650 MHz) band. This document contains a correction to the effective date. The Commission deferred the effective date due to the anticipated need for Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA). The Commission has since determined that OMB approval is not required.

DATES: Sections 90.203(o) and 90.1323 were effective June 10, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Thayer (202) 418–2290, email *Gary.Thayer@fcc.gov*, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 90 **Federal Register** of May 11, 2005 (70 FR 24712). This document corrects the **Federal Register** as it appeared. In FR Doc. 05–9096, published on May 11, 2005 (70 FR 24712), the Commission is correcting the effective date of §§ 90.203(o) and 90.1323, to read as June 10, 2005.

Correction

1. On page 24712, in the third column, the **DATES** section is corrected to read as ''Effective date: June 10, 2005.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14178 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 05–21878]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: Our requirements for advanced air bags are being phased in during two stages, the first of which extends over a three-year period from September 1, 2003 to August 31, 2006. The phase-in provides special requirements for limited line manufacturers. These manufacturers are excluded from the first two years of the phase-in but must achieve 100 percent compliance for the third year, *i.e.*, the production year beginning September 1, 2005. To address problems faced by Porsche, we are issuing this interim final rule revising the phase-in for limited line manufacturers so that 95 percent of a manufacturer's vehicles must comply with the advanced air bag requirements during this one-year period instead of 100 percent.

DATES: *Effective Date:* The amendment made in this rule is effective September 1, 2005.

Comments: Comments must be received by NHTSA not later than September 19, 2005, and should refer to the docket and notice number of this document.

ADDRESSES: You may submit comments [identified by the DOT DMS Docket Number above] 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: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments 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 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 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264, facsimile (202) 493–2739.

For legal issues, you may call Mr. Edward Glancy, Office of the Chief Counsel, at (202) 366–2992, facsimile (202) 366–3820.

You may send mail to any of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00–7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection,* to require that future air bags be designed so that, compared to air bags then installed in production vehicles, they create less risk of serious air bag-induced injuries and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. The rule is

being phased in during two stages. During the first phase-in, from September 1, 2003, through August 31, 2006, increasing percentages of motor vehicles are required to meet requirements for minimizing air bag risks.

In developing the advanced air bag rule and in subsequent proceedings conducted in response to petitions for reconsideration, we have sought to ensure the prompt development and availability of vehicles equipped with advanced air bags while also recognizing the special needs of various types of manufacturers. As such, we have established several different phase-in requirements. While different requirements apply during the three-year phase-in, effective September 1, 2006, all vehicles must comply with the first phase advanced air bag requirements.

The primary phase-in, which applies to manufacturers producing the vast majority of motor vehicles, is as follows: 9/1/03 to 8/31/04—20 percent of a manufacturer's production; 9/1/04 to 8/31/05—65 percent of a manufacturer's production; 9/1/05 to 8/31/06—100 percent of a manufacturer's production, with manufacturers allowed to use advanced credits.

Limited line manufacturers have the option of being excluded from the first two years of the phase-in but, if they select this option, must achieve 100 percent compliance for the third year, *i.e.*, the production year beginning 9/1/05. They are not permitted to use advanced credits under this option.

Finally, final stage manufacturers of vehicles built in two or more stages, and manufacturers that produce no more than 5,000 vehicles annually for sale in the United States, are excluded from the phase-in altogether.

Porsche, which is electing to use the limited line manufacturer option for the first phase-in, recently contacted the agency concerning a problem it is having in achieving 100 percent compliance for the production year beginning 9/1/05. While NHTSA has been previously been aware of this problem, Porsche provided updated information to the agency in a meeting held in June 2005.

While Porsche will be able to certify all of its regular production vehicles to the advanced air bag requirements, it produces a small number of custom-made vehicles which it has not been able to redesign to meet the advanced air bag requirements. Because of the small number of these vehicles, Porsche has had difficulty in getting air bag suppliers to provide advanced air bag designs. Air bag suppliers have, of course, been primarily engaged during this time period in working to develop advanced air bags to enable larger vehicle manufacturers to meet the new requirements.

We note that we have previously responded to requests by Porsche for relief related to the advanced air bag phase-in requirements. In a final rule published in the **Federal Register** (68 FR 23614) on May 5, 2003, we provided some additional flexibility for limited line manufacturers, but declined to adopt a request by Porsche that would have relieved it of any responsibility to meet the advanced air bag requirements before September 1, 2006. Porsche had requested that it be treated the same as small volume manufacturers, *i.e.*, manufacturers that produce no more than 5,000 vehicles annually for sale in the United States. While we recognized that Porsche is relatively small related to other manufacturers, we noted that it is still substantially larger than those manufacturers for which the agency determined compliance before September 1, 2006 would pose an unreasonable hardship.

In a document published in the **Federal Register** (69 FR 60316) on October 8, 2004, we denied a petition from Porsche requesting that advanced credits be available to manufacturers selecting the limited line option. We concluded that granting the request would provide manufacturers using the limited line option with relief not justified by their circumstances nor contemplated by the provision for advanced credits.

After considering the latest information provided by Porsche, however, we have decided to reconsider whether some type of additional relief should be provided in light of that company's compliance problems. The basic problem faced by Porsche is that it wishes to continue production for a brief period past September 1, 2005, of a very small number of vehicles which it has not been able to design to meet the advanced air bag requirements. The total number of such vehicles was initially on the order of about 500, but is now approximately 100 or fewer. Porsche indicated that it has made efforts with respect to date of production and allocation of vehicles among different countries, but has not been able to fully eliminate the problem.

As indicated above, throughout the advanced air bag rulemaking process we have sought to ensure the prompt development and availability of vehicles equipped with advanced air bags while also recognizing the special needs of various types of manufacturers. Given the situation faced by Porsche, we believe that some additional relief is appropriate.

We also note that, in the past, we have in special circumstances made a small adjustment in effective date to enable a manufacturer to continue production of a vehicle not designed to meet a new requirement. On January 10, 1997, in response to a petition from Ford, we published in the **Federal Register** (62 FR 1401) a final rule granting a four-month extension of the date by which vehicles with a gross vehicle weight rating of more than 8,500 pounds and less than 10,000 pounds must comply with the requirements for safety belt fit.

In that situation, due to unexpected developmental problems with a new truck platform, Ford had been unable to begin production by the expected date. It therefore wanted to continue to produce the current truck platform for an additional four months. Ford requested the leadtime extension to avoid having to redesign the existing platform for only a four-month extension. In that rulemaking, we decided that since the safety benefits for the affected trucks was likely to be very small, and the costs accentuated, a four-month extension of leadtime was reasonable. We also noted that, due to the demographics of the occupants of the affected trucks, the benefits from applying the belt fit requirement to those trucks would be less than the benefits of applying it to lower GVWR vehicles.

In the current situation, we note that the number of vehicles Porsche wishes to continue to produce is very small. Moreover, the nature of the vehicles is such that they are less likely to be used to transport young children than most vehicles.

Given that we are in the midst of phasing in the advanced air bag requirements, we believe the most appropriate relief is to revise the phase-in for limited line manufacturers so that 95 percent of a manufacturer's vehicles must comply with the advanced air bag requirements during this one-year period instead of 100 percent. We believe that Porsche is the only vehicle manufacturer that will utilize this relief, and that the actual number of vehicles for which it is utilized will be far less than five percent of its production. In any event, since the amendment only affects limited line manufacturers and only changes the phase-in requirement for a single production year from 100 percent to 95 percent, any impact on the number of vehicles equipped with advanced air bags in the fleet will be minimal.

Because the September 1, 2005 compliance date for limited line manufacturers is fast approaching, NHTSA finds good cause to issue this interim final rule adjusting the phase-in percentage for the September 1, 2005 to August 31, 2006 production year from 100 percent to 95 percent for these manufacturers. Further, we find good cause to make it effective on September 1, 2005. Today's interim final rule makes no substantive change to the standard, but makes a small adjustment in the phase-in percentage for limited line manufacturers for a single production year. We are accepting comments on this interim final rule. See, Request for Comments section below.

Regulatory Analyses and Notices

A. Executive Order, 12866 Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to 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 rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers, and only adjusts the advanced air bag phase-in percentage for limited line manufacturers for the September 1, 2005 to August 31, 2006 production year from 100 percent to 95 percent.

The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

This final rule only affects manufacturers of motor vehicles that selected the limited line manufacturer option for the advanced air bag phase-in. None of these manufacturers are small businesses. Small organizations and governmental jurisdictions are unlikely to purchase the motor vehicles affected by this rule and, in any event, this rulemaking will not cause price increases. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

C. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the standard is identical to the Federal standard. However, the United States Government, a state, or political subdivision of a state, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

F. Privacy Act

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

G. Environmental Impacts

We have considered the impacts of this final rule under the National

Environmental Policy Act. This rulemaking action only adjusts the advanced air bag phase-in percentage for limited line manufacturers for the September 1, 2005 to August 31, 2006 production year from 100 percent to 95 percent. This rulemaking does not require any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1] Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

(2) On that page, click on ''Simple Search.''

(3) On the next page *(http://dms.dot.gov/search/)*, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''Search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, reporting and record keeping requirements, and tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

■ 2. Section 571.208 is amended by revising S14.1(b) to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S14.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2006.* * * *

(b) Manufacturers that sell three or fewer carlines, as that term is defined at 49 CFR 585.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. At least 95 percent of the vehicles manufactured by the manufacturer on or after September 1, 2005 and before September 1, 2006 shall meet the requirements specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

* * * * *

Issued: July 15, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–14245 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–59–P

[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

Proposed Rules

Federal Register
Vol. 70, No. 138
Wednesday, July 20, 2005

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No. 03–027P]

RIN 0583–AD12

Changes in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Years 2005–2008

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMMARY: The Food Safety and Inspection Service (FSIS) is proposing to change the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection, identification and certification services, overtime and holiday inspection services, and laboratory services. The Agency is proposing to raise these fees to reflect, among other factors, national and locality pay increases for Federal employees and inflation. In the past, FSIS has amended its regulations on an annual basis. With this proposed regulation, FSIS is providing for four annual fee increases. This will provide the meat, poultry and egg industry with more timely cost information and will streamline the Agency's rulemaking process. The Agency is also proposing to increase the annual fee for its Accredited Laboratory Program.

DATES: The Agency must receive comments before August 19, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW, Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Electronic mail: *fsis.regulationscomments@fsis.usda.gov.* Follow the online instructions at that site for submitting comments. All submissions received must include the Agency name and docket number 03–027P.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Proposed_Rules_Index/.*

FOR FURTHER INFORMATION CONTACT: For further information concerning policy issues contact Wanda Haxton, Program Analyst, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700; telephone (202) 205–0299, fax (202) 690–0486.

For further information concerning fees contact Deborah Patrick, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, 2154 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700; telephone (202) 720–3368, fax (202) 690–4155.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments, and meat and poultry processed at official establishments. The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provides for mandatory inspection of egg products processed at official plants. FSIS provides mandatory inspection services at official establishments and plants, and bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

The Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621 *et seq.*), authorizes the provision of a variety of voluntary services. FSIS provides a range of voluntary inspection, certification, and identification services under the AMA to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of the voluntary inspection, certification and identification services it provides.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover the costs of providing these services.

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program; such accreditation allows labs to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates that laboratory accreditation fees cover the costs of the Accredited Laboratory Program. This same Act mandates an annual payment of an accreditation fee on the anniversary date of each accreditation.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification and certification services; laboratory services and lab accreditation. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the past, FSIS has amended its regulations on an annual basis to change the fees it charges. Because of the length of the rulemaking process, the fiscal year has partially elapsed by the time the Agency publishes a final rule to amend its fees. As a result, the Agency is unable to recover the full cost of voluntary inspection services, overtime and holiday inspection services,

laboratory services and laboratory accreditation fees in a timely manner.

With this rulemaking, FSIS is proposing to amend its regulations to provide for four annual fee increases in one rulemaking action. The Agency will continue to perform a yearly cost analyses to determine whether the fees are adequate to recover its costs. If the Agency determines that the fees established for any one year need to be adjusted, the Agency will initiate another rulemaking to correct that fiscal year's fees and readjust future year's fees. In the Agency's analysis of projected costs, set forth in Tables 2 through 5, the agency has identified the bases for the increases in the cost of voluntary base time inspection services, overtime and holiday inspection services, and laboratory services for fiscal year 2005 through fiscal year 2008.

The Agency is proposing to increase the annual fee for participants in the Accredited Laboratory Program from the current $1500 to the figures listed in Table 6 because program costs have increased and will continue to increase and because previously accumulated funds that have been used to pay for program costs have decreased. The reasons for the increases in the lab accreditation fees are more fully discussed below in the section entitled ''Economic Effects of Inspection and Laboratory Service Fees''.

FSIS calculated its projected increases in salaries and inflation in fiscal years 2005 through 2008. The average pay raise for Federal employees in 2004, which reflects both a national cost of living increase and locality differentials, was 4.1 percent effective January 2004. The average combined national and locality pay raise is estimated to be 3.5% for fiscal year 2005 and 2.3% for fiscal years 2006, 2007, and 2008. Inflation for fiscal year 2005 is estimated to be 2.0%. Inflation for fiscal year 2006 is estimated to be 2.0%. Inflation for fiscal year 2007 is estimated to be 2.1%. Inflation for fiscal year 2008 is estimated to be 2.1%. These estimates are based on the Office of Management and Budget's Presidential Economic Assumptions for FY 2005 and the out years.

The cost of providing inspection services includes both direct and overhead costs. Overhead costs include the cost of support activities such as program and agency overhead costs. Overhead expenditures are allocated across the agency for each direct hour of inspection. Direct costs include the cost of salaries, employee benefits, and travel. Because of improvements in accessing data from the accounting system, the Agency had been able to estimate the employee benefits ascribable to overtime work and has included these in the fee calculation.

Section 10703 of the 2002 Farm Bill authorized the Secretary of Agriculture to set the hourly rate of compensation for FSIS employees exempt from the Fair Labor Standards Act (*i.e.* veterinarians) that work in establishments subject to the FMIA and PPIA at one and one-half times the employee's hourly rate of base pay. FSIS has adjusted its overtime fees to reflect these costs. Previously, veterinarians were limited to the time and a half rate paid to employees at grade level GS–10, step 1.

The current and proposed fees are listed by type of service in Table 1. The first increase, from the current rate to the proposed 2005 rate, is larger than the subsequent increases because this is the first rate increase in 2 years. Therefore, it includes the increases in salaries and inflation that have occurred since the rate was last set in 2003.

TABLE 1.—CURRENT AND NEW FEES (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	Current rate	Proposed rate 2005	Proposed rate 2006	Proposed rate 2007	Proposed rate 2008
Base time	$43.64	$46.78	$47.79	$48.84	$49.93
Overtime & holiday	50.04	55.19	56.40	57.65	58.93
Laboratory	61.80	66.42	67.83	69.31	70.82

The differing proposed fee increases for each type of service are the result of the different amounts that it costs FSIS to provide these three types of services. The differences in costs stem from various factors, including the different salary levels of the program employees who perform the services. See Table 2 through Table 5.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2005

Base Time:	
Actual 2002 Salaries	$23.02
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041	0.94
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041	0.98
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × .075	0.65
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation (2.0%) = [Current Rate ($43.64) + Adjustment for FY 2004 Inflation and Pay Increases ($1.76) − Actual 2002 Salaries ($23.02) + 2003 Pay Raise ($0.94) + Calendar 2004 Pay Raise ($0.98)] × 0.02	0.49
Total	46.78
Overtime and Holiday Inspection Services:	
Actual 2002 Salaries	30.72
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041	1.26
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041	1.31
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × 0.75	0.87
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2005—Continued

Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation (2.0%) = [Current Rate ($50.04) + Adjustment for FY 2004 Inflation and Pay Increases ($3.44) − Actual 2002 Salaries ($30.72) + 2003 Pay Raise ($1.26) + Calendar 2004 Pay Raise ($1.31)] × 0.02	0.51
Total	55.19
Laboratory Services:	
Actual 2002 Salaries	24.71
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041	1.01
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041	1.05
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × 0.75	0.70
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation (2.0%) = [Current Rate ($61.80) + Adjustment for FY 2004 Inflation and Pay Increases ($2.82) − Actual 2002 Salaries ($24.71) + 2003 Pay Raise ($1.01) + Calendar 2004 Pay Raise ($1.05)] × 0.02	0.84
Total	66.42

TABLE 3.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2006

Base Time:	
FY 2005 Salaries = Actual 2002 Salaries ($23.02) + 2003 Pay Raise ($0.94) + Calendar 2004 Pay Raise ($0.98) + 2005 Pay Adjustment ($0.65)	$25.59
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023	0.59
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.49
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate ($46.78) − FY 2005 Salaries ($25.60)] × 0.02	0.42
Total	47.79
Overtime and Holiday Inspection Services:	
FY 2005 Salaries = Actual 2002 Salaries ($30.72) + 2003 Pay Raise ($1.26) + Calendar 2004 Pay Raise ($1.31) + 2005 Pay Adjustment ($0.87)	34.16
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023	0.79
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate ($55.19) − FY 2005 Salaries ($34.16)] × 0.02	0.42
Total	56.40
Laboratory Services:	
FY 2005 Salaries = Actual 2002 Salaries ($24.71) + 2003 Pay Raise ($1.01) + Calendar 2004 Pay Raise ($1.05) + 2005 Pay Adjustment ($0.70)	27.47
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023	0.63
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate ($66.42) − FY 2005 Salaries ($27.47)] × 0.02	0.78
Total	67.83

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2007

Base Time:	
FY 2006 Salaries = 2005 Salaries + 2006 Pay Adjustment	$26.18
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.60
Benefits	6.58
Travel and Operating Costs	2.12

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2007—Continued

Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.49
FY 2006 Inflation	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate ($47.80) − FY 2006 Salaries ($26.18)] × 0.021	0.45
Total	48.84
Overtime and Holiday Inspection Services:	
FY 2006 Salaries = 2005 Salaries + 2006 Pay Adjustment	34.95
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.80
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate ($56.40) − FY 2006 Salaries ($34.95)] × 0.021	0.45
Total	57.65
Laboratory Services:	
FY 2006 Salaries = 2005 Salaries + 2006 Pay Adjustment	28.10
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.65
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation	0.78
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate ($67.84) − FY 2006 Salaries ($28.11)] × 0.021	0.83
Total	$69.31

TABLE 5.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008

Base Time:	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	$26.79
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.62
Benefits	6.58
Travel and Operating Costs	2.12
Program Overead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.48
FY 2006 Inflation	0.42
FY 2007 Inflation	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate ($48.84) − FY 2007 Salaries ($26.79)] × 0.021	0.46
Total	49.93
Overtime and Holiday Inspection Services:	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	35.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.82
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation	0.42
FY 2007 Inflation	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate ($57.65) − FY 2007 Salaries ($35.75)] × 0.021	0.46
Total	58.93
Laboratory Services:	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	28.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.66
Benefits	6.72
Travel and Operating Costs	.....
Program Overhead	14.82

TABLE 5.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008—Continued

Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation	0.78
FY 2007 Inflation	0.83
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate ($69.32) − FY 2007 Salaries ($28.76)] × 0.021	0.85
Total	70.82

TABLE 6.—CALCULATIONS FOR ACCREDITED LABORATORY FEES FY 2005–2008

	Proposed FY 2005	Proposed FY 2006	Proposed FY 2007	Proposed FY 2008
Estimated Income	$589,693	$747,440	$760,602	$751,658
Expense Estimates	594,653	751,838	757,344	748,341
New Accreditation Fee	4,000	5,200	5,400	5,600

The Agency must recover the actual cost of voluntary inspection services covered by this proposed rule. These fee increases are essential for the continued sound financial management of the Agency's costs. FSIS plans to make the final rule effective as soon as possible. To expeditiously make this rulemaking effective so that the increased costs can be recovered in as timely a fashion as possible, and because the Agency has previously announced that it would be reviewing these fees on an annual basis, the Administrator has determined that 30 days for public comment is sufficient.

Executive Order 12866 and Regulatory Flexibility Act

Because this proposed rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under EO 12866.

The Administrator, FSIS, has determined that this proposed rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities. The inspection services provided under these proposed fees are voluntary. Establishments and plants requesting these services are likely to have calculated that the revenues generated from additional production will exceed the incremental costs of the services. Similarly, laboratories will determine whether the additional revenue for services which require accreditation will exceed the costs of becoming accredited.

Economic Effects of Inspection and Laboratory Service Fees

As a result of the new base time, holiday and overtime, and laboratory service fees, the Agency expects to collect an estimated $131 million, $136 million, $144 million, and $153 million in years 2005, 2006, 2007, and 2008 respectively, or a total of $563 million over the next four years to cover the cost of voluntary certification, identification and inspection services, overtime and holiday inspection services, and laboratory services for meat and poultry. By proposing a 4 year fee increase instead of a single year fee increase, the Agency is streamlining the rulemaking process to help ensure that the fee increases are effective at the beginning of each fiscal year. During the next four years, food safety will be maintained at the establishments affected by this rule as the Agency provides the services. The increased fees will cover inflation and national and locality pay raises, but will not support any new budgetary initiative. The costs that industry would experience by the raise in fees are similar to other increases that the industry would experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2002 was about 85.7 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, July 17, 2003). The increase in cost per pound of product associated with the proposed fee increases is, in general, $.0002. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and process.

Even though this increase in fees is negligible, the industry is likely to pass along a significant portion of the proposed fee increases to consumers because of the inelastic nature of the demand curve facing consumers. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., *A Complete System for Demand for Food*. USDA/ERS Technical Bulletin No. 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Economic Effects of Accredited Laboratory Program

As a result of the new Accredited Laboratory Program fees, the Agency expects to collect $589,693 in FY 2005, $747,440 in FY 2006, $760,602 in FY 2007, and $751,658 in FY 2008. The Accredited Laboratory Program is required to cover its operational costs through these fees. These adjustments are designed to recover FSIS costs for providing these accreditation services including maintaining an adequate reserve. The amount of the accreditation fee each year is based on the number of expected new and renewal accreditations, the anticipated costs directly related to the accreditation process, and the estimated reserve from previous years. These fees are set based on FSIS best projections of what it will cost the Agency to provide these services in fiscal years 2005 through 2008.

The fee increases, beginning with a fiscal year 2005 increase of $2,500, are necessary because the level of the program's reserve surplus has decreased below a one-year operating-cost level. The large increase in estimated expenses from FY 2005 to FY 2006 is due to the contracting out of check samples previously done in-house. As a result, FSIS needs to raise the fees it charges to offset the amount it no longer

has from the reserve to carry out the program. FSIS also needs to raise its fees to cover its increased direct overhead costs including those for salary increases, employee benefits, inflation, and bad debt, and to maintain an adequate operating reserve. FSIS believes that it needs a yearly reserve of approximately $250,000 to maintain the program's continuity. This amount of reserve funds is needed to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year, and to cover salaries and other operating expenses during the first two to three months of the fiscal year. Less than 5% of the program's income is received during the first two months of a fiscal year. Approximately 75% of the program's income is received in late December and early January; the remainder of the program's income is distributed about evenly across the rest of the fiscal year. Maintaining an adequate reserve therefore is essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year.

FSIS anticipates that some laboratories will determine that it is not cost effective to maintain accreditation. As a result, revenue estimates assume a 10% reduction in the number of participants for each fiscal year. While lower participation reduces costs, the costs are spread over fewer laboratories. The fees, consequently, increase despite lower costs.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge may be made of the application of the provisions of the proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it online through the FSIS Web Page at *http://www.fsis.usda.gov/Regulations_&_Policies/2005_Proposed_Rules_Index/index.asp.*

The Regulations.gov Website is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 is revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 1622, 1627 and 2219a; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53. 2. Sections 391.2, 391.3 and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $46.78 per hour per program employee in fiscal year 2005, $47.79 per hour per program employee in fiscal year 2006, $48.84 per hour per program

employee in fiscal year 2007, and $49.93 per hour per program employee in fiscal year 2008.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $55.19 per hour per program employee in fiscal year 2005, $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $66.42 per hour per program employee in fiscal year 2005, $67.83 per hour per program employee in fiscal year 2006, $69.31 per hour per program employee in fiscal year 2007, and $70.82 per hour per program employee in fiscal year 2008. 3. In § 391.5, paragraph (a) is revised to read as follows:

§ 391.5 Laboratory accreditation fee.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be $4,000.00 for fiscal year 2005; $5,200.00 for fiscal year 2006; $5,400.00 for fiscal year 2007; and $5,600.00 for fiscal year 2008.

* * * * *

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

4. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

5. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $55.19 per hour per program employee in fiscal year 2005, $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

6. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $55.19 per hour per program employee in fiscal year 2005, $56.40 per hour per program employee in fiscal year 2006, $57.65 per hour per program employee in fiscal year 2007, and $58.93 per hour per program employee in fiscal year 2008.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

7. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

8. Sections 592.510, 592.520 and 592.530 are revised to read as follows:

§ 592.510 Base time rate.

The base time rate for voluntary inspection services for egg products is $46.78 per hour per program employee in fiscal year 2005, $47.79 per hour per program employee in fiscal year 2006, $48.84 per hour per program employee in fiscal year 2007, and $49.93 per hour per program employee in fiscal year 2008.

§ 592.520 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspection program personnel of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $55.07 per hour per program employee in fiscal year 2005, $56.75 per hour per program employee in fiscal year 2006, $58.54 per hour per program employee in fiscal year 2007, and $60.43 per hour per program employee in fiscal year 2008.

§ 592.530 Holiday rate.

When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $55.07 per hour per program employee in fiscal year 2005, $56.75 per hour per program employee in fiscal year 2006, $58.54 per hour per program employee in fiscal year 2007, and $60.43 per hour per program employee in fiscal year 2008.

Done in Washington, DC, on: July 15, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–14296 Filed 7–19–05; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 631

RIN 0702–AA50

Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule; Request for comments.

SUMMARY: The Department of the Army proposes to revise its part concerning armed forces disciplinary control boards and off-installation liaison and operations. The part prescribes uniform policies and procedures for the establishment, and operation of Armed Forces Disciplinary Control Boards, and off-installation liaison and operations.

DATES: Comments submitted to the address below on or before September 19, 2005 will be considered.

ADDRESSES: You may submit comments, identified by ''32 CFR 631 and RIN 0702–AA50 in the subject line, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-Mail: *james.crumley@hqda-aoc.army.pentagon.mil*. Include 32 CFR 631 and RIN 0702–AA50 in the subject line of the message.
- Mail: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM–MPD–LE, 2800 Army Pentagon, Washington, DC 20310–2800.

FOR FURTHER INFORMATION CONTACT: James Crumley (703) 692–6721.

SUPPLEMENTARY INFORMATION:

A. Background

This rule has previously been published. The Administrative Procedure Act, as amended by the Freedom of Information Act requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this part fall into that category.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does 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. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial 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.

Jeffery B. Porter,

Chief, Law Enforcement Policy and Oversight Section.

List of Subjects in 32 CFR Part 631

Alcohol, Business, Discrimination, Health, Investigations, Law enforcement, Military Personnel, Privacy, Safety, Uniform Code of Military Justice.

For reasons stated in the preamble the Department of the Army proposes to revise part 631 to Subchapter I of Title 32 to read as follows:

PART 631—ARMED FORCES DISCIPLINARY CONTROL BOARDS AND OFF-INSTALLATION LIAISON AND OPERATIONS

Subpart A—General

Sec.
631.1 Purpose.
631.2 Applicability.
631.3 Supervision.
631.4 Exceptions.

Subpart B—Armed Forces Disciplinary Control Boards

631.5 General.
631.6 Responsibilities.
631.7 Composition of boards.
631.8 Participation by civil agencies.
631.9 Duties and functions of boards.
631.10 Administration.
631.11 Off-limits establishments and areas.

Subpart C—Off-Installation Operations (Military Patrols and Investigative Activities) and Policy

631.12 Objectives.
631.13 Applicability.
631.14 Policy (for Army only).
631.15 Policy (for Air Force only).
631.16 Policy (for Navy only).
631.17 Policy (for Marine Corps only).
631.18 Operations.
Appendix A to Part 631—Armed Forces Disciplinary Control Board Procedures Guide

Authority: 10 U.S.C. 3012(b)(1)(g).

Subpart A—General

§ 631.1 Purpose.

This part prescribes uniform policies and procedures for the establishment, and operation of the following:

(a) Armed Forces Disciplinary Control Boards (AFDCB).

(b) Off-installation liaison and operations.

§ 631.2 Applicability.

This part applies to the following:

(a) Active U.S. Armed Forces personnel of the Army, Air Force, Navy, and Marine Corps, and the Coast Guard wherever they are stationed.

(b) U.S. Armed Forces Reserve personnel only when they are performing Federal duties or engaging in activities directly related to performing a Federal duty or function.

(c) National Guard personnel only when called or ordered to active duty in a Federal status within the meaning of Title 10, United States Code.

§ 631.3 Supervision.

The following will develop and have staff supervision over AFDCB and off-installation enforcement policies. (1) The Office of the Provost Marshal General (OPMG), Headquarters, Department of the Army (HQDA). This official serves as the proponent for this part, and has primary responsibility for its content.

(2) U.S. Air Force Director of Security Forces and Force Protection, Department of the Air Force.

(3) Director, Naval Criminal Investigative Service.

(4) Commandant of the Marine Corps.

(5) Commandant of the Coast Guard.

(6) Installation commanders are authorized to convene joint service boards within their AR 5–9 area of responsibility.

§ 631.4 Exceptions.

Requests for exceptions to policies contained in this part will be forwarded to HQDA (DAPM–MPD–LE), Washington, DC 20310–2800.

Subpart B—Armed Forces Disciplinary Control Boards

§ 631.5 General.

AFDCBs may be established by installation, base, or station commanders to advise and make recommendations to commanders on matters concerning eliminating conditions, which adversely affect the health, safety, welfare, morale, and discipline of the Armed Forces.

(a) For the Army, routine off-limits actions must be processed by an AFDCB following the procedures in § 631–11.

(b) Coast Guard commanders must have written authorization from the Commandant (G'WP) prior to establishing an AFDCB.

§ 631.6 Responsibilities.

(a) Regional Directors of the Army Installation Management Agency, Air Force commanders, Navy regional commanders, Marine Corps commanders, and Coast Guard commanders will—(1) Determine level and degree of participation by subordinate commanders in joint Service boards, when appropriate.

(2) Resolve differences among subordinate commanders regarding board areas of responsibility, and the designation of sponsoring commanders.

(3) Evaluate board recommendations, and actions from subordinate sponsoring commanders.

(4) Forward recommendations to HQDA, OPMG (DAPM–MPD–LE), WASH DC 20310–2800, regarding circumstances that require Service headquarters action or programs having widespread applicability.

(5) Ensure that subordinate commanders assess the availability of drug abuse paraphernalia in the vicinity of Department of Defense (DOD) installations through their AFDCBs, according to DOD Directive 1010.4. Coast Guard commanders should refer to COMDTINST M1000.6 series, chapter 20, for guidance on Coast Guard substance abuse policies.

(b) Military installation commanders for off-installation enforcement actions will—(1) Conduct off-installation operations as authorized by law and Service policy.

(2) Coordinate off-installation operations with other Service commanders, as applicable, for uniformity of effort, and economy of resources.

(3) Assist Federal, State, and local law enforcement agencies within the limits imposed by law and DOD policy.

(c) Sponsoring commanders will provide administrative support for AFDCB programs to include the following—(1) Promulgating implementing directives, and convening the board.

(2) Providing a recorder for the board.

(3) Providing copies of the minutes of board meetings to other Service commanders who are represented on the board, and to other AFDCBs as appropriate.

(4) Approving or disapproving the minutes, and recommendations of the board, and making appropriate distribution, as required.

(5) Publishing lists of ''off-limits'' establishments and areas.

(6) Ensuring that responsible individuals are notified of any unfavorable actions being contemplated or taken regarding their establishments per Annex A.

(7) Distributing pertinent information to the following—

(i) All units within their jurisdictional area.

(ii) Units stationed in other areas whose personnel frequent their area of jurisdiction.

(8) Ensuring that procedures are established to inform all Service personnel, including those who may be visiting or are in a travel status, of off-limits restrictions in effect within the respective AFDCB's jurisdictional area.

§ 631.7 Composition of boards.

(a) Boards should be structured according to the needs of the command, with consideration given to including representatives from the following functional areas—

(1) Law enforcement.

(2) Legal counsel.

(3) Health.

(4) Environmental protection.

(5) Public affairs.

(6) Equal opportunity.

(7) Fire and safety.

(8) Chaplains' service.

(9) Alcohol and drug abuse.

(10) Personnel and community activities.

(11) Consumer affairs.

(b) Sponsoring commanders will designate a board president, and determine by position which board members will be voting members. Such designations will be included in a written agreement establishing the board.

§ 631.8 Participation by civil agencies.

(a) Civil agencies or individuals may be invited to board meetings as observers, witnesses or to provide assistance where they possess knowledge or information pertaining to problem areas within the board's jurisdiction.

(b) Announcements and summaries of board results may be provided to appropriate civil agencies.

§ 631.9 Duties and functions of boards.

The AFDCBs will—

(a) Meet as prescribed by appendix A of this part.

(b) Receive reports, and take appropriate action on conditions in their area of responsibility relating to any of the following—

(1) Disorders and lack of discipline.

(2) Prostitution.

(3) Sexually transmitted disease.

(4) Liquor violations.

(5) Racial and other discriminatory practices.

(6) Alcohol and drug abuse.

(7) Drug abuse paraphernalia.

(8) Criminal or illegal activities involving cults or hate groups.

(9) Illicit gambling.

(10) Areas susceptible to terrorist activity.

(11) Unfair commercial or consumer practices.

(12) Other undesirable conditions deemed unsafe which may adversely affect the health and well being of military personnel or their families.

(c) Report to all major commanders in the board's area of responsibility—

(1) Conditions cited in paragraph (b) of this section.

(2) Recommended action as approved by the board's sponsoring commander.

(d) Coordinate with appropriate civil authorities on problems or adverse conditions existing in the board's area of jurisdiction.

(e) Make recommendations to commanders in the board's area of jurisdiction concerning off-installation procedures to prevent or control undesirable conditions.

§ 631.10 Administration.

(a) Commanders are authorized to acquire, report, process, and store information concerning persons and organizations, whether or not affiliated with DOD, according to the applicable Service parts of the sponsoring commander, which—

(1) Adversely affect the health, safety, morale, welfare, or discipline of service members regardless of status.

(2) Describes crime conducive conditions where there is a direct Service interest.

(b) Boards will function under the supervision of a president (§ 631.7(b)).

(c) Certain expenses incurred by Service members in the course of an official board investigation or inspection may be reimbursable per appropriate Service finance parts or instructions. Requests for reimbursement will be submitted through the sponsoring commander.

(d) Records of board proceedings will be maintained as prescribed by records management policies, and procedures of the sponsoring commander's Service.

§ 631.11 Off-limits establishments and areas.

(a) The establishment of off-limits areas is a function of Command. It may be used by commanders to help maintain good order and discipline, health, morale, safety, and welfare of service members. Off-limits action is also intended to prevent service

members from being exposed to or victimized by crime-conducive conditions. Where sufficient cause exists, commanders retain substantial discretion to declare establishments or areas temporarily off-limits to personnel of their respective commands in emergency situations. Temporary off-limits restrictions issued by commanders in an emergency situation will be acted upon by the AFDCB as a first priority. As a matter of policy, a change in ownership, management, or name of any off-limits establishment does not, in and of itself, revoke the off-limits restriction.

(b) Service members are prohibited from entering establishments or areas declared off-limits according to this part. Violations may subject the member to disciplinary action per applicable Service parts, and the Uniform Code of Military Justice (UCMJ). Family members of service members and others associated with the Service or installation should be made aware of off-limits restrictions. As a general policy, these establishments will not be visited by Service law enforcement personnel unless specifically determined by the installation commander that visits or surveillance are warranted.

(c) Prior to initiating AFDCB action, installation commanders will attempt to correct adverse conditions or situations through the assistance of civic leaders or officials.

(d) Prior to recommending an off-limits restriction, the AFDCB will send a written notice (certified mail-return receipt requested) to the individual or firm responsible for the alleged condition or situation. The AFDCB will specify in the notice a reasonable time for the condition or situation to be corrected, along with the opportunity to present any relevant information to the board. If subsequent investigation reveals that the responsible person has failed to take corrective action, the board will recommend the imposition of the off-limits restriction.

(e) A specified time limit will not be established when an off-limits restriction is invoked. The adequacy of the corrective action taken by the responsible individual will be the determining factor in removing an off-limits restriction.

(f) A person whose establishment or area has been declared off-limits may at any time petition the president of the board to remove the off-limits restriction. The petition will be in writing and will include a detailed report of action taken to eliminate the condition or situation that caused imposition of the restriction. The president of the AFDCB may direct an investigation to determine the status of corrective actions noted in the petition. The board will either recommend removal or continuation of the off-limits restriction to the local sponsoring commander based on the results of the investigation.

(g) Off-limits procedures to be followed by the boards are in Appendix A of this part. In the United States, off-limits signs will not be posted on civilian establishments by U.S. military authorities.

(h) In areas Outside of the Continental United States (OCONUS), off-limits and other AFDCB procedures must be consistent with existing Status of Forces Agreements (SOFAs).

Subpart C—Off-Installation Operations (Military Patrols and Investigative Activities) and Policy

§ 631.12 Objectives.

The primary objectives of off-installation operations are to—

(a) Render assistance and provide information to Service members.

(b) Preserve the safety, and security of service members.

(c) Preserve good order and discipline among Service members and reduce off-installation incidents and offenses.

(d) Maintain effective cooperation with civil authorities, and community leaders.

§ 631.13 Applicability.

This section is not applicable to the U.S. Coast Guard.

§ 631.14 Army Policy.

(a) Soldiers, military and/or Department of the Army Civilian (DAC) police performing off-installation operations must be thoroughly familiar with applicable agreements, constraints of the Posse Comitatus Act (18 U.S.C. 1385) in the Continental United States (CONUS) and United States-host nation agreements in areas OCONUS.

(b) Military and/or DAC police assigned to off-installation operations have the sole purpose of enforcing parts, and orders pertaining to persons subject to their jurisdiction.

(c) Military and/or DAC police accompanying civilian law enforcement officers remain directly responsible to, and under the command of, U.S. Army superiors. Military and DAC police may come to the aid of civilian law enforcement officers to prevent the commission of a felony or injury to a civilian law enforcement officer.

(d) Regional Directors of the Army Installation Management Agency (IMA), Commander, Army Materiel Command (AMC), and Commander, Army Test and Evaluation Command (ATEC) may authorize subordinate commanders to establish off-installation operations within the limits imposed by higher authority, the Posse Comitatus Act (18 U.S.C. 1385) in CONUS, and United States-host nation agreements in OCONUS areas—

(1) To assist Federal, State, and local law enforcement agencies.

(2) In conjunction with military activities.

(3) To safeguard the health and welfare of Soldiers.

(4) When the type of offenses or the number of Soldiers frequenting an area is large enough to warrant such operations.

(e) The constraints on the authority of Soldiers and/or DAC police to act off-Installation, (Posse Comitatus Act (18 U.S.C. 1385) in CONUS and United States-host nation agreements in OCONUS areas) and the specific scope of off-installation operations will be clearly delineated in all authorizations for off-installation operations. Off-installation operations will be coordinated with the local installation commander through the Staff Judge Advocate (SJA), or higher authority, and appropriate civilian law enforcement agencies.

§ 631.15 Air Force Policy.

(a) Airmen, military and/or Department of the Air Force Civilian (DAFC) police performing off-installation operations must be thoroughly familiar with applicable agreements, constraints of the Posse Comitatus Act (18 U.S.C. 1385) in CONUS and United States-host nation agreements in areas OCONUS.

(b) Military and/or DAFC police assigned to off-installation operations have the sole purpose of enforcing parts, and orders pertaining to persons subject to their jurisdiction.

(c) Military and/or DAFC police accompanying civilian law enforcement officers remain directly responsible to, and under the command of, U.S. Air Force superiors. Military and DAFC police may come to the aid of civilian law enforcement officers to prevent the commission of a felony or injury to a civilian law enforcement officer.

(d) Air Force commanders may authorize subordinate commanders to establish off-installation operations within the limits imposed by higher authority, the Posse Comitatus Act (18 U.S.C. 1385) in CONUS, and United States-host nation agreements in OCONUS areas—(1) To assist Federal, State, and local law enforcement agencies.

(2) In conjunction with military activities.

(3) To safeguard the health and welfare of Airmen.

(4) When the type of offenses or the number of Airmen frequenting an area is large enough to warrant such operations.

(e) The constraints on the authority of Airmen and/or DAFC police to act off-installation, (Posse Comitatus Act (18 U.S.C. 1385) in CONUS and United States-host nation agreements in OCONUS areas) and the specific scope of off-installation operations will be clearly delineated in all authorizations for off-installation operations. Off-installation operations will be coordinated with the local installation commander through the Staff Judge Advocate (SJA), or higher authority, and appropriate civilian law enforcement agencies.

§ 631.16 Navy Policy.

The following policies apply to off-installation operations—

(a) Article 1630–020, MILPERSMAN revised August 2002, and Navy Parts, Article 0922 concerning the establishment and operation of a shore patrol.

(b) In accordance with SECNAV 1620.7A, Navy Absentee Collection Units collect, and process apprehended absentees and deserters, escort apprehended absentees, and deserters to their parent commands or to designated processing activities, escort prisoners between confinement facilities, and provide liaison with civilian law enforcement authorities.

(c) Navy personnel will be thoroughly familiar with all applicable agreements and Implementing standard operating procedures, to include the constraints of the Posse Comitatus Act (18 U.S.C. 1385), in CONUS and United States-host nation agreements in OCONUS areas, as applicable.

(d) *Within CONUS.* (1) Installation Commanders may request authority from their Regional Commander, to establish off-installation operations—

(i) To assist Federal, State, and local law enforcement agencies within the limits imposed by higher authority and the Posse Comitatus Act (18 U.S.C. 1385).

(ii) In conjunction with military operations.

(iii) To safeguard the health, and welfare of Naval personnel.

(iv) When the type of offenses or the number of service members frequenting an area is large enough to warrant such operation.

(2) Constraints on the authority of military personnel to act off-installation (Posse Comitatus Act (18 U.S.C. 1385) and the specific scope of the authority will be clearly delineated in all authorizations for off-installation operations.

(e) Within OCONUS, off-installation operations will be kept at the minimum needed for mission accomplishment. Installation commanders may authorize off-installation operations as required by local conditions and customs, as long as they are conducted in accordance with applicable treaties and SOFAs.

(f) Off-installation operations will be coordinated with the local installation commander through the JAG or higher authority, and local law enforcement authorities.

(g) Security personnel selected for off-installation operations must—

(1) Have mature judgment and law enforcement experience.

(2) Be thoroughly familiar with all applicable agreements and implementing standard operating procedures, to include the constraints of the Posse Comitatus Act (18 U.S.C. 1385), in CONUS and United States Host Nation agreements in OCONUS area, as applicable.

(h) Security personnel accompanying civilian police during off-installation operations do so only to enforce parts and orders pertaining to persons subject to their jurisdiction. Security personnel assigned off-installation operations remain directly responsible to, and under the command of their Navy superiors when accompanying civilian police. Security personnel performing such duties may come to the aid of civilian police in order to prevent the commission of a felony or injury to a civilian police officer.

(i) Civilian police and court liaison may be established with concurrence of the Naval Criminal Investigative Service and is encouraged particularly when the intent is to reduce mishaps.

§ 631.17 Marine Corps Policy.

(a) *Within CONUS.* (1) Commanders may request authority from Headquarters, Marine Corps (Code POS), to establish off-installation operations—

(i) To assist Federal, State, and local law enforcement agencies within the limits imposed by higher authority and the Posse Comitatus Act (18 U.S.C. 1385).

(ii) In conjunction with military operations.

(iii) To safeguard the health, and welfare of Marines.

(iv) When the type of offenses or the number of service members frequenting an area is large enough to warrant such operations.

(2) Constraints on the authority of military personnel to act off-installation (Posse Comitatus Act (18 U.S.C. 1385)) and the specific scope of the authority will be clearly delineated in all authorizations for off-installation operations.

(b) Within OCONUS, off-installation operations will be kept at the minimum needed for mission accomplishment. Installation commanders may authorize off-installation operations as required by local conditions and customs, as long as they are conducted in accordance with applicable treaties and SOFAs.

(c) Off-installation operations will be coordinated with the local installation commander through the SJA, or higher authority, and local law enforcement authorities.

(d) Marines selected for off-installation operations must—

(i) Have mature judgment and law enforcement experience.

(ii) Be thoroughly familiar with all applicable agreements and implementing standard operating procedures, to include the constraints of the Posse Comitatus Act (18 U.S.C. 1385), in CONUS and United States-host nation agreements in OCONUS areas, as applicable.

(e) Marines accompanying civilian police during off-installation operations do so only to enforce parts and orders pertaining to persons subject to their jurisdiction. Marines assigned off-installation operations remain directly responsible to, and under the command of their Marine superiors when accompanying civilian police. Marines performing such duties may come to the aid of civilian police in order to prevent the commission of a felony or injury to a civilian police officer.

(f) Procedures for absentee and deserter collection units to accept an active-duty absentee or deserter from civilian authorities may be established.

(g) Civilian police and civil court liaison may be established.

§ 631.18 Operations.

When an incident of substantial interest to the Service, involving Service property or affiliated personnel, occurs off-installation, the Service law enforcement organization exercising area responsibility will—

(a) Obtain copies of civilian law enforcement reports for processing or forwarding according to applicable Service parts.

(b) Return apprehended persons to representatives of their Service as soon as practicable.

APPENDIX A TO PART 631—ARMED FORCES DISCIPLINARY CONTROL BOARD PROCEDURES GUIDE

A–1. Purpose. This guide prescribes procedures for the establishment, operation, and coordination of AFDCBs. AFDCB proceedings are not adversarial in nature.

A–2. Meetings.

a. The board will meet quarterly. The commander establishing the AFDCB may specify whether the meetings will be open or closed. If not specified, the decision is at the discretion of the president of the board. Normally proceedings are closed, but may be opened to the public when circumstances warrant.

b. Special meetings may be called by the president of the board. Except by unanimous consent of members present, final action will be taken only on the business for which the meeting was called.

c. A majority of voting members constitutes a quorum for board proceedings.

A–3. AFDCB composition. Voting members will be selected per section 631.7.

A–4. Attendance of observers or witnesses.

a. The board may invite individual persons or organization representatives as witnesses or observers if they are necessary or appropriate for the conduct of board proceedings. The below listed authorities may assist in addressing installation or command concerns or issues.

(1) Federal, State, and local judicial, legislative, and law enforcement officials.

(2) Housing part and enforcement authorities.

(3) Health, and social service authorities.

(4) Environmental protection authorities.

(5) Alcoholic beverage control authorities.

(6) Equal employment opportunity authorities.

(7) Consumer affairs advocates.

(8) Chamber of Commerce representatives.

(9) Public works or utility authorities.

(10) Local fire marshal, and public safety authorities.

(11) State and local school board or education officials.

(12) Any other representation deemed appropriate by the sponsoring command such as, news media, union representatives, and so forth.

b. Invited witnesses and observers will be listed in the minutes of the meeting.

A–5. Appropriate areas for board consideration.

a. Boards will study and take appropriate action on all reports of conditions considered detrimental to the good order and discipline, health, morale, welfare, safety, and morals of Armed Forces personnel. These adverse conditions include, but are not limited to, those identified in § 631.9.

b. The board will immediately forward to the local commander reported circumstances involving discrimination based on race, color, sex, religion, age, or national origin.

A–6. Off-limit procedures.

a. Off-limits restrictions should be invoked only when there is substantive information indicating that an establishment or area frequented by Armed Forces personnel presents conditions, which adversely affect their health, safety, welfare, morale, or morals. It is essential that boards do not act arbitrarily. Actions must not be of a punitive nature. Boards should work in close cooperation with local officials and proprietors of business establishments, and seek to accomplish their mission through mutually cooperative efforts. Boards should encourage personal visits by local military, and civilian enforcement or health officials to establishments considered below standard. AFDCBs should point out unhealthy conditions or undesirable practices to establishment owners or operators to produce the desired corrective action.

b. In cases involving discrimination, the board should not rely solely on letters written by the Equal Opportunity Office, and Military Affairs Committee or investigations of alleged racial discrimination.

c. If the board decides to attempt to investigate or inspect an establishment, the president or a designee will prepare, and submit a report of findings, and recommendations at the next meeting. This procedure will ensure complete, and documented information concerning questionable adverse conditions.

d. When the board concludes that conditions adverse to Armed Forces personnel do exist, the owner or manager will be sent a letter of notification (Annex A). This letter will advise him or her to raise standards by a specified date, and, if such conditions or practices continue, off-limits proceedings will be initiated. Any correspondence with the individuals responsible for adverse conditions, which may lead to off-limits action, will be by certified mail.

e. If a proprietor takes remedial action to correct undesirable conditions previously noted, the board should send a letter of appreciation (Annex B) recognizing this cooperation.

f. If undesirable conditions are not corrected, the proprietor will be invited to appear before the AFDCB to explain why the establishment should not be placed off-limits (Annex C). Any proprietor may designate in writing a representative to appear before the board in his or her behalf.

g. In cases where proprietors have been invited to appear before the board, the president of the board will perform the following—

(1) Prior to calling the proprietor—

(a) Review the findings and decision of the previous meeting.

(b) Call for inspection reports.

(c) Allow those present to ask questions and discuss the case.

(2) When the proprietor or his or her representative is called before the board—

(a) Present the proprietor with a brief summary of the complaint concerning the establishment.

(b) Afford the proprietor an opportunity to present matters in defense.

(c) Invite those present to question the proprietor. After the questioning period, provide the proprietor an opportunity to make a final statement before being dismissed.

(3) Deliberations on recommended actions will be in closed session, attended only by board members.

h. The board should recommend an off-limits restriction only after the following:

(1) The letter of notification (Annex A) has been sent.

(2) An opportunity for the proprietor to appear before the board has been extended.

(3) Further investigation indicates that improvements have not been made.

i. The minutes will indicate the AFDCB's action in each case. When a recommendation is made to place an establishment off-limits, the minutes will show the procedural steps followed in reaching the decision.

j. Recommendations of the AFDCB will be submitted to the sponsoring commander for consideration. The recommendations will then be forwarded to other installation commanders who are represented on the board (Annex D). If no objection to the recommendations is received within 10 days, the sponsoring commander will approve or disapprove the recommendations and forward the decision to the AFDCB president.

k. Upon approval of the AFDCB's recommendations, the president will write the proprietor that the off-limits restriction has been imposed (Annex E).

l. A time limit should not be specified when an off-limits restriction is revoked. The adequacy of the corrective action taken by the proprietor of the establishment must be the determining factor in removing the off-limits restriction.

m. Military authorities may not post off-limits signs or notices on private property.

n. In emergencies, commanders may temporarily declare establishments or areas off-limits to service members subject to their jurisdiction. The circumstances for the action will be reported as soon as possible to the commander sponsoring the board. Detailed justification for this emergency action will be provided to the board for its deliberations.

o. Appropriate installation commanders will publish a list of off-limits establishments and areas using command and media channels.

A–7. Removal of off-limits restrictions.

a. Removal of an off-limits restriction requires AFDCB action. Proprietors of establishments declared off-limits should be advised that they may appeal to the appropriate AFDCB at any time. In their appeal they should submit the reason why the restriction should be removed. A letter of notification for continuance of the off-limits restriction should be sent to the proprietor if the AFDCB does not remove the off-limits restriction (Annex F). The proprietor may appeal to the next higher commander if not satisfied with continuance after exhausting all appeals at the local sponsoring commander level. Boards should make at least quarterly inspections of off-limits establishments. A statement that an inspection has been completed should be included in AFDCB minutes.

b. When the board learns that the proprietor has taken adequate corrective measures, the AFDCB will take the following actions:

(1) Discuss the matter at the next meeting and make an appropriate recommendation.

(2) Forward a recommendation for removal of the off-limits restriction to the sponsoring commander. If approved, a letter removing

the restriction (Annexes G & H) will be sent to the proprietor.

(3) The minutes will reflect action taken.

A–8. Duties of the AFDCB president.

The president of the AFDCB will—

a. Schedule and preside at all AFDCB meetings.

b. Provide an agenda to each voting member at least 72 hours prior to the meeting.

c. Ensure records, minutes, and correspondence are prepared, distributed, and maintained per § 631.10(d).

A–9. Commanders.

The installation commander, and commanders within an AFDCB's area of responsibility must be thoroughly acquainted with the mission and services provided by AFDCBs. AFDCB members should keep their respective commanders informed of command responsibilities pertaining to AFDCB functions and actions.

A–10. Public affairs.

a. Due to the sensitive nature of the subject matter, there will not be a media release in connection with AFDCB meetings. However, any AFDCB proceeding, which is open to the public, will also be open to representatives of the news media. Representatives of the news media will be considered observers, and will not participate in matters considered by the AFDCB. Members of the news media may be invited to participate in an advisory status in coordination with the public affairs office.

b. News media interviews and releases will be handled through the public affairs office according to applicable Service parts.

A–11. Minutes.

a. Minutes will be prepared in accordance with administrative formats for minutes of meetings prescribed by the Service of the sponsoring commander (Annex I). The written minutes of AFDCB meetings will constitute the official record of the AFDCB proceedings. Verbatim transcripts of board meetings are not required. The reasons for approving or removing an off-limits restriction, to include a complete address of the establishment or area involved, should be indicated in the order of business. In addition, the AFDCB's action will be shown in the order or sequence of actions taken. A change in the name of an establishment or areas in an off-limits restriction will also be included.

b. Distribution of the minutes of AFDCB meetings will be limited to the following—

(1) Each voting member, sponsoring command, and commands and installations represented by the board.

(2) Each civilian and military advisory member, if deemed appropriate.

(3) Civilian and Government agencies within the State in which member installations are located having an interest in the functions of the board, if appropriate.

c. AFDCB minutes are subject to release and disclosure in accordance with applicable Service parts and directives.

d. Minutes and recommendations of the board will be forwarded to the sponsoring commander for approval.

Annex A—Letter of Notification

(Letterhead)

(Appropriate AFDCB)

Proprietor

Dear Sir: This letter is to inform you that it has come to the attention of the Armed Forces Disciplinary Control Board (AFDCB) that certain conditions reported at your establishment may adversely affect the (health, safety, or welfare) of members of the Armed Forces.

The AFDCB is initiating action to determine whether your establishment (area) should be placed off-limits to members of the Armed Forces if (cite conditions) are not corrected by (date).

A representative of the AFDCB will visit your establishment to determine if steps have been taken to correct the conditions outlined above.

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces, Disciplinary Control Board.

(**Note:** Use certified mail, return receipt requested if mailed.)

Annex B—Letter of Appreciation

(Letterhead)

(Appropriate AFDCB)

Proprietor

Dear Sir: This is in reference to my letter of (date) concerning the conditions(s) reported at your establishment which adversely affected the health and welfare of members of the Armed Forces.

The Board appreciates your action(s) to correct the condition(s) previously noted and does not contemplate further action with respect to this specific matter.

Your continued cooperation is solicited.

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces Disciplinary Control Board.

Annex C—Letter of Invitation

(Letterhead)

Proprietor

Dear Sir: This is in reference to my letter of (date) concerning the condition reported at your establishment which adversely affects the (health, safety, or welfare) of members of the Armed Forces. Information has been received by the board which indicates you have not taken adequate corrective action to eliminate the reported condition.

Reports presented to the Armed Forces Disciplinary Control Board (AFDCB) indicate (list and describe conditions).

You are advised that the AFDCB will initiate action to determine whether your establishment should be declared off-limits to members of the Armed Forces.

You may appear in person, with or without counsel, before the AFDCB at its next scheduled meeting on (date, time, and place). At that time you will have the opportunity to refute the allegation(s), or to inform the board of any remedial action(s) you have taken or contemplate taking to correct the condition. It is requested that you inform the President, of the AFDCB if you plan to attend.

Any questions regarding this matter may be addressed to the President, Armed Forces Disciplinary Control Board, (address). Every effort will be made to clarify the matter for you.

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces, Disciplinary Control Board.

(**Note:** Send certified mail, return receipt requested if mailed.)

Annex D—AFDCB Off-Limits Approval Letter

(Letterhead)

Office Symbol

MEMORANDUM FOR (Commanders of Supported Installations)
SUBJECT: Establishments or Areas Recommended for Off-Limits Designation

1. On (date), the Armed Forces Disciplinary Control Board (AFDCB) recommended imposition of the following off-limits restrictions: (name and address of establishment)

2. Commanders furnishing AFDCB representatives are requested to provide any comments within 10 days as to whether (name of establishment or area) should be placed off-limits.

3. A copy of the AFDCB minutes and recommendation is enclosed.

FOR THE (SPONSORING) COMMANDER:

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces, Disciplinary Control Board.

Encl

Annex E—Letter of Declaration of Off-Limits

Proprietor

Dear Sir: This letter is to inform you that your establishment has been declared off-limits to members of the Armed Forces effective (date). Members of the Armed Forces are prohibited from entering your establishment (premises) as long as this order is in effect. This action is being taken because of (state the conditions) which are detrimental to the (health or welfare) of members of the Armed Forces.

This restriction will remain in effect indefinitely in accordance with established Armed Forces policy. Removal of the restriction will be considered by the Armed Forces Disciplinary Control Board upon presentation of information that satisfactory corrective action has been taken.

Correspondence appealing this action may be submitted to the President, Armed Forces Disciplinary Control Board, (cite address).

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces Disciplinary Control Board.

Annex F—AFDCB Letter of Notification of Continuance of Off-Limits Restrictions After Appearance before the AFDCB

(Letterhead)

Proprietor

Dear Sir: The Armed Forces Disciplinary Control Board (AFDCB) did not favorably

consider your request for removal of the off-limits restriction now in effect at your establishment.

This decision does not preclude further appeals or appearances before the AFDCB at any of its scheduled meetings. Correspondence pertaining to this matter should be addressed to the President, Armed Forces Disciplinary Control Board, (cite address).

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces Disciplinary Control Board.

Annex G—AFDCB Letter of Removal of Off-Limits Restriction

(Letterhead)

Proprietor

Dear Sir: This letter is to inform you that the off-limits restriction against (name of establishment) is removed effective (date). Members of the Armed Forces are permitted to patronize your establishment as of that date.

The corrective actions taken in response to the concerns of the Armed Forces Disciplinary Control Board are appreciated.

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces Disciplinary Control Board.

Annex H—AFDCB Notification of Removal of Off-Limits Restriction

(Letterhead)

Proprietor

Dear Sir: This letter is to inform you that your request for removal of the off-limits restriction now in effect at (name of establishment) was favorably considered by the Armed Forces Disciplinary Control Board (AFDCB).

This restriction will be removed effective (date). Members of the Armed Forces will be permitted to patronize your establishment as of that date.

The corrective actions taken in response to the concerns of the AFDCB are appreciated.

Sincerely,

John J. Smith
Colonel, U.S. Army, President, Armed Forces Disciplinary Control Board.

Annex I—Format for AFDCB Meeting Minutes

(Letterhead)

MEMORANDUM FOR

SUBJECT: Armed Forces Disciplinary Control Board

1. Pursuant to authority contained in AR 190–24/AFI 31–213/ OPNAVINST 1620.2A/ MCO 1620.2C/and COMDTINST 1620.1D, Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, the (area) Armed Forces Disciplinary Control Board convened at (place), (date)

2. The following voting members were present: (List names, titles, and addresses.)

3. The following military members were present: (List names, titles, and addresses.)

4. The following civilian advisory members were present: (List names, titles, and addresses.)

5. Order of business:

a. Call to order.

b. Welcome.

c. Introduction of members and guests.

d. Explanation of purpose of board.

e. Reading of minutes.

f. Unfinished or continuing business.

g. New business (subparagraph as necessary).

h. Recommendations.

(1) List of areas and establishments being placed in an off-limits restriction. Include complete name and address (or adequate description of an area) of any establishment listed.

(2) List of areas and establishments being removed from off-limits restrictions. Include complete name and address (or adequate description of an area) of any establishment listed.

(3) Other matters or problems of mutual concern.

i. Time, date, and place for next board meeting.

j. Adjournment of the board.

(Board Recorder's Name)
(Rank, Branch of Service)
Recorder, Armed Forces Disciplinary Control Board

Approved:
(Board President's Name)
(Rank, Branch of Service)
President, Armed Forces Disciplinary Control Board.

(**Note:** The minutes of the board proceedings will be forwarded by official correspondence from the board president to the sponsoring commander for approval of the board's recommendations. By return endorsement, the sponsoring commander will either approve or disapprove the board's recommendations.)

[FR Doc. 05–14213 Filed 7–19–05; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–063]

RIN 1625–AA09

Drawbridge Operation Regulations; Boot Key Harbor, Marathon, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the Boot Key Harbor bridge, mile 0.13, between Marathon and Boot Key, Monroe County, Florida. Due to the amount of vehicle traffic and the lack of openings during the proposed time period, this proposed action would improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic. This proposed rule would allow the bridge to open on the hour between the hours of 7 a.m. to 7 p.m. At all other times, the bridge will open on demand following a 10-minute notification to the bridge tender. The draw shall open as soon as practicable for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

DATES: Comments and related material must reach the Coast Guard on or before August 19, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL, 33131–3050, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6747.

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 CGD07–05–063, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The operation of the Boot Key Harbor bridge, mile 0.13, at Marathon, is governed by 33 CFR 117.272, which requires the draw to open on signal; except that during the evening hours from 10 p.m. to 6 a.m., the draw shall open on signal if at least 2 hours notice is given. The City of Marathon requested that the Coast Guard temporarily change the operating schedule to ensure worker safety, as the bridge requires prompt corrective repairs and renovation. Our analysis of the bridge logs showed an average of only 12.2 openings per week over a one-year period during the hours of 7 a.m. through 7 p.m. In light of this information, the bridge owner amended his initial request and asked the Coast Guard to permanently change the regulation governing the Boot Key Harbor drawbridge due to the low number of openings during the one-year time period mentioned above.

Discussion of Proposed Rule

The Coast Guard proposes to modify the existing bridge operation regulation and create a permanent regulation that would allow the draw of the Boot Key Harbor Bridge to open on the hour from 7 a.m. to 7 p.m. At all other times, the bridge will remain closed to navigation unless a 10-minute advance notification is provided to the bridge tender. The draw shall open as soon as practicable for tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

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. This proposed rule would modify the existing bridge schedule to allow for efficient vehicle traffic flow and still meet the reasonable needs of navigation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the vicinity of Boot Key Harbor. This regulation would not have a significant economic impact on a substantial number of small entities because the movement of vehicular traffic will be significantly improved while at the same time the impact to vessel traffic is for short and reasonable durations. Moreover, Public vessels of the United States, tugs with tows, and vessels in distress would be allowed to pass at anytime.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

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

Technical Standards

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

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

Environment

We have analyzed this 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 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 (32)(e), of the Instruction, from further environmental documentation. This rule fits within paragraph (32)(e) because it pertains to operation regulations for bridges. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise § 117.272 to read as follows:

§ 117.272 Boot Key Harbor.

The draw of the Boot Key Harbor drawbridge, mile 0.13, between Marathon and Boot Key, shall open on the hour from 7 a.m. to 7 p.m. At all other times, the bridge will open following a 10-minute notification to the bridge tender. The draw shall open on demand and as soon as practicable for the passage of tugs with tows, public vessels of the United States and vessels whereby a delay would endanger life or property.

Dated: July 12, 2005.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–14247 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 256

[Docket No. 2005–2 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a settlement proposal for the adjustment of certain royalty rates for use of the cable statutory license.

DATES: Comments and Notices of Intent to Participate are due by August 19, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment and a Notice of Intent to Participate should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, S.E., Washington, DC 20559–6000. If delivered by a commercial courier, an original and five copies of a comment and a Notice of Intent to Participate must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E., between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/CARP, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Comments and Notices of Intent to Participate may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Gina Giuffreda, Attorney–Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, 17 U.S.C., creates a statutory license for cable systems that retransmit to their subscribers over–the–air broadcast signals. Royalty fees for this license are calculated as percentages of a cable system's gross receipts received from subscribers for receipt of broadcast signals. A cable system's individual gross receipts determine the applicable percentages. These percentages, and the gross receipts limitations, are published in 37 CFR part 256 and are subject to adjustment at five–year intervals. 17 U.S.C. 801(b)(2)(A) & (D).[1] This is a window year for such an adjustment.

A cable rate adjustment is initiated by the filing of a petition from a party with a significant interest in the rates. The Library received two such petitions. The

[1] Unless otherwise noted, all references are to chapter 8 of title 17 of the United States Code as in effect prior to May 31, 2005, the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

first was filed on January 10, 2005, on behalf of the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association (collectively, the ''Joints Sports Claimants'') and the Motion Picture Association of America, Inc., its member companies and other producers and/or distributors of syndicated television programs (collectively, the ''Program Suppliers''). This petition requested that the Copyright Office commence a proceeding to adjust the cable compulsory license royalty rates set forth in 37 CFR 256.2. On April 29, 2005, the Office received a second petition from the National Cable & Telecommunications Association (hereinafter, ''NCTA''), echoing the first petitioners' request for a rate adjustment proceeding to adjust the rates in § 256.2. Specifically, NCTA asked that the rate adjustment proceeding ''adjust upward the gross receipts limitations currently specified in 37 CFR 256.2 to reflect national monetary inflation and to adjust downward the rates established in [section] 111(d)(1)(B),'' and that it reconsider and ''adjust downward the rates currently specified in 37 CFR 256.2(c) and (d) (the 3.75% rate and the 'syndex surcharge').''

In response to the first petition and before receipt of the second one, the Library published a **Federal Register** notice seeking comment on the Joint Sports/Program Suppliers' petition and directing interested parties to file a Notice of Intent to Participate in a Copyright Arbitration Royalty Panel (''CARP'') proceeding. 70 FR 16306 (March 30, 2005). The notice also designated a 30–day period to enable the parties to negotiate a new rate schedule. 37 CFR 251.63(a).

In accordance with the March 30 notice, the Office received on June 30, 2005, one agreement, submitted jointly by the NCTA, the Joint Sports Claimants, the Program Suppliers, the Canadian Claimants, the Public Television Claimants, the National Association of Broadcasters, Broadcast Music, Inc., the American Society of Composers, Authors & Publishers, SESAC, Inc., and the Devotional Claimants (''Settling Parties''), representing all of the parties who filed notices of intent to participate in this proceeding. The agreement proposes amending the basic royalty rates and the gross receipts limitations, the regulations governing the filing of the statements of account to reflect these changes, and proposes that these changes become effective beginning with the second semiannual accounting period of 2005. The agreement also notes that the syndex rates are not being adjusted for the new license period.

However, the Settling Parties have yet to reach an agreement on whether or how to adjust the 3.75 rate set forth in § 256.2(c) of title 37 of the CFR. Thus, the Settling Parties continue to consider these rates and will notify the Office, on or before August 10, 2005, as to whether they will seek adjustments to the 3.75 rate.

In the meantime, the Settling Parties have asked that the Librarian adopt the agreed–upon rates in accordance with the regulations governing a rate adjustment proceeding. The relevant rule provides that:

> the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice–and–comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

37 CFR 251.63(b). This **Federal Register** *notice fulfills the notice and comment requirement of § 251.63(b).*

II. Proposed Rates and Gross Receipts Limitations

The June 30 petition proposes specific adjustments to the cable license royalty rates, pursuant to 17 U.S.C. 801(b)(2)(A), and the gross receipts limitations, pursuant to 17 U.S.C. 801(b)(2)(D). The details of the adjustments are as follows.

With respect to rates, the joint proposal raises the basic (or minimum) fee for providing broadcast stations from .956 of 1 per centum to 1.013 of 1 per centum of gross receipts for the privilege of further transmitting any non–network programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter; the fee for the first distant signal equivalent from .956 of 1 per centum to 1.013 of 1 per centum of gross receipts; the fee for the second, third, and fourth distant signal equivalents from .630 of 1 per centum to .668 of 1 per centum of gross receipts; and the fee for the fifth distant signal equivalent and each distant signal equivalent thereafter, from .296 of 1 per centum to .314 of 1 per centum of gross receipts.

With respect to the gross receipts limitations which determine the size of a cable system (small, medium or large) and the royalty fee percentages that apply to those characterizations, the joint proposal puts forward increases as well. The gross receipts threshold for determining when a cable system is a small system would be raised from $98,600 to $137,100. Medium–sized cable systems have two methods of calculating their royalties, depending upon which side of the limitation threshold their gross receipts result. That threshold would be raised from $189,800 to $263,800, with the minimum reportable gross receipts over $263,800 being raised from $7,400 to $10,400. Finally, the gross receipts limitation for determining a large cable system would be raised from $379,600 to $527,600.

The joint proposal establishes July 1, 2005, as the effective date of these rates, meaning that they would apply to royalty calculations and payments made by cable systems beginning with the second accounting period of 2005.

III. Proposed Rulemaking

As noted above, the Library is publishing the terms of the joint proposal as proposed amendments to parts 201 and 256 of its rules. Any party who wishes to challenge these proposed rules must submit its written comments to the Librarian of Congress no later than close of business on August 19, 2005. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule or rules that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate in a CARP proceeding to adjust the cable rates and gross receipts limitations. It should be understood that anyone who challenges the proposed rules must be willing to fully participate in a CARP proceeding and have a significant interest in the adjustment of the rates. Failure to submit a Notice of Intent to Participate will preclude an interested party from participating in this proceeding and will preclude consideration of his or her written challenge. Any interested party that does file a Notice of Intent to Participate will be notified as to when the CARP proceeding will commence and when written direct cases will be due.

List of Subjects

37 CFR Part 201

Copyright, Procedures.

37 CFR Part 256

Cable television, Royalties.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR parts 201 and 256 as follows:

PART 201–GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

2. Section 201.17 is amended as follows:

a. In paragraph (d)(2), by removing ''$379,600'' each place it appears and adding ''$527,600'' in its place;

b. In paragraph (e)(12), by removing ''$98,600'' and adding ''$137,100'' in its place; and

c. In paragraph (g)(2)(ii), by removing ''0.956'' and adding ''1.013'' in its place.

PART 256–ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

3. The authority citation for part 256 continues to read:

Authority: 17 U.S.C. 702, 802

§ 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

4. Section 256.2 is amended as follows:

a. In paragraph (a), by removing the phrase ''the second semiannual accounting period of 2000'' and adding the phrase ''the second semiannual accounting period of 2005'' in its place;

b. In paragraph (a)(1), by removing ''.956'' and adding ''1.013'' in its place;

c. In paragraph (a)(2), by removing ''.956'' and adding ''1.013'' in its place;

d. In paragraph (a)(3), by removing ''.630'' and adding ''.668'' in its place;

e. In paragraph (a)(4), by removing ''.296'' and adding ''.314'' in its place;

f. In paragraph (b), by removing the phrase ''the second semiannual accounting period of 2000'' and adding the phrase ''the second semiannual accounting period of 2005'' in its place;

g. In paragraph (b)(1), by removing ''$189,800'' each place it appears and adding ''$263,800'' in its place, and by removing ''$7,400'' and adding ''$10,400'' in its place; and

h. In paragraph (b)(2), by removing ''$189,800'' each place it appears, and adding ''$263,800'' in its place, and by removing ''$379,600'' each place it appears and adding ''$527,600'' in its place.

Dated: July 14, 2005

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. 05–14270 Filed 7–19–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R10–OAR–2005–ID–0002; FRL–7941–1]

Approval and Promulgation of Implementation Plans; Idaho; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to correct an error in the incorporation by reference provisions in the approval of revisions to the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) published on January 16, 2003 (68 FR 2217). This correction would remove the list of State toxic air pollutants from the definition of ''regulated air pollutant'' in the EPA-approved Idaho State implementation plan.

DATES: Written comments must be received by August 19, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. R10–OAR–2005–ID–0002, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. Mail: Office of Air, Waste, and Toxics, Environmental Protection Agency, Attn: David C. Bray, Mailcode: AWT–107, 1200 Sixth Avenue, Seattle, WA 98101.

4. Hand Delivery: Environmental Protection Agency Region 10, Attn: David C. Bray (AWT–107), 1200 Sixth Ave., Seattle, WA 98101, 9th floor mail room. Such deliveries are only accepted during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R10–OAR–2005–ID–0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information may not be publicly available, such as 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 EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air, Waste and Toxics, Region 10, AWT–107, Environmental Protection Agency, 1200 Sixth Ave., Seattle, WA 98101; phone: (206) 553–4253; fax number: (206) 553–0110; e-mail address: *bray.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. This Action
A. What Correction Is EPA Proposing?
B. What Is the Basis for This Action?
C. What Will be the Effect of This Correction?
III. Statutory and Executive Order Requirements

I. Background

On January 16, 2003 (68 FR 2217), EPA approved numerous changes to the Idaho Department of Environmental Quality (IDEQ) rules as revisions to the Idaho State implementation plan (SIP). In that rulemaking, EPA did not approve the IDEQ rules for toxic air pollutants or TAP's and specifically excluded the toxic air pollutant provisions (IDAPA 58.01.01.203.03, 210, 223, 585, and 586) from its incorporation by reference. See 40 CFR 52.670(c)(37); 68 FR at 2224 (January 16, 2003); 67 FR 52666, 52668, 52672–73 (August 13, 2002). However, EPA inadvertently incorporated a cross reference to the toxic air pollutant provisions (Sections 585 and 586) within the IDEQ definition of ''regulated air pollutant'' (IDAPA 58.01.01.006(84)). It was EPA's intention to exclude all aspects of the IDEQ toxic air pollutant program from the federally-approved SIP.

EPA also received a request from the IDEQ to correct the inadvertent incorporation by reference. In an October 20, 2004 letter to EPA, the Administrator of the IDEQ Air Quality Division requested that EPA clarify or correct its approval of the Idaho SIP.

II. This Action

A. What Correction Is EPA Proposing?

EPA made an error by inadvertently including a cross reference to the toxics provisions within the IDEQ definition of ''regulated air toxic''. EPA is proposing to correct this error by amending the incorporation by reference of the Idaho SIP to exclude paragraph (f) from the definition of ''regulated air pollutant'' at IDAPA 58.01.01.006(84).

B. What Is the Basis for This Action?

Under section 110(k)(6) of the Clean Air Act, whenever EPA determines that its action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof shall be provided to the state and public. Pursuant to section 110(k)(6), EPA is proposing a revision to the Idaho SIP to correct the inadvertent incorporation by reference of the Idaho toxic air pollutant provisions within the definition of ''regulated air pollutant.''

C. What Will Be the Effect of This Correction?

If EPA finalizes this correction to the incorporation by reference, then IDEQ's list of toxic air pollutants will not be considered to be ''regulated air pollutants'' for purposes of the federally-approved SIP. All of the air pollutants regulated under the federal Clean Air Act will still be ''regulated air pollutants'' for SIP purposes in accordance with the IDEQ definition. The corrected definition meets or exceeds the requirements of the federal Clean Air Act and EPA's regulations for State implementation plans. The corrected definition is also consistent with IDEQ's SIP submittal and EPA's January 16, 2003 approval action which specifically excluded IDEQ's toxic air pollutant rules from the EPA-approved SIP.

III. Statutory and Executive Order Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely corrects the incorporation by reference of the list of toxic air pollutants used in regulatory provisions that are not part of the EPA-approved SIP and does not impose any additional requirements on state, local or tribal governments or the private sector. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely corrects the incorporation by reference of the list of State toxic air pollutants as initially requested by the State and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 7, 2005.

Julie Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 05–14279 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7939–6]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Mallard Bay Landing Bulk Plant Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a notice of intent to delete the Mallard Bay Landing Bulk Plant Superfund Site (Site), located northeast of Grand Chenier in Cameron Parish, Louisiana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a Direct Final Notice of Deletion of the Mallard Bay Landing Bulk Plant Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the Direct Final Notice of Deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the Direct Final Notice of Deletion, it will not take effect, and as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 19, 2005.

ADDRESSES: Written comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Michael A. Hebert, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8315 or 1–800–533–3508 (*hebert.michael@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Vermilion Parish Library, 605 McMurtry Street, Gueydan, Louisiana 70542–4140, (337) 536–6781, Monday through Friday 10 a.m. to 5 p.m., Saturday 9 a.m. to 12 p.m.; Louisiana Department of Environmental Quality, Public Records Center, 602 North Fifth Street, Baton Rouge, LA 70802, (225) 219–3168, Monday through Friday 8 a.m. to 4:30 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 8, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–14068 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 05–25, RM–10593; DA 05–1870]

Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this document, the Wireline Competition Bureau extends the reply comment deadline. Due to the voluminous and complex record received in the initial round of comments, the Bureau agreed with Petitioners filing motions for extensions of time that it may be extremely difficult for parties to review and respond to the comments by the reply comment deadline. In the interest of developing a thorough and complete record in this proceeding, the Bureau grants the Petitioners' request, and hereby extends the reply comment deadline. This extension should allow parties adequate time to review and respond to the record in this proceeding.

DATES: Reply comments are due on or before July 29, 2005.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–25, RM–10593 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS)/*http://www.fcc.gov/cgb/ecfs/.*
- *Hand Delivery/Courier:* The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.
—All hand deliveries must be held together with rubber bands or fasteners.
—Any envelopes must be disposed of before entering the building.
—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Pamela Arluk, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1471 or via the Internet at *Pamela.arluk@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket No. 05–25, RM–10593, adopted on June 28, 2005, and released on June 28, 2005. The complete text of

this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet Site at *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or e-mail at *http://www.bcpiweb.com.*

When filing reply comments, parties should reference WC Docket No. 05–25, and RM–10593 and conform to the filing procedures referenced in the Order and Notice of Proposed Rulemaking. *See* Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05–25, RM–10593, Order and Notice of Proposed Rulemaking, 70 FR 19381, April 13, 2005. All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case WC Docket No. 05–25, RM–10593. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, parties should send a copy of their filings to Pamela Arluk, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–C434, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in WC Docket No. 05–25, RM–10593 are available for review through the ECFS and are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or by e-mail at *fcc@bcpiweb.com.*

Synopsis of Order

On January 31, 2005, the Commission released a Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05–25, RM–10593. See Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05–25, RM–10593, Order and Notice of Proposed Rulemaking, 70 FR 19381, April 13, 2005. In the NPRM, the Commission commenced a broad examination of the regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services after June 30, 2005, and sought comment on the special access regime that should follow the expiration of the CALLS plan, including whether to maintain or modify the Commission's pricing flexibility rules for special access services. The comment deadline was June 13, 2005, and the reply comment deadline is July 12, 2005.

CompTel/ALTS and the United States Telecom Association (USTA) (together, the Petitioners) filed motions with the Commission, requesting a seventeen-day extension of the deadline for filing reply comments. The Petitioners explain that the requested extension would allow all parties the opportunity to better evaluate, and respond to, the complex economic analyses offered by many commenters in this proceeding. On June 13, 2005, the Commission received more than 2,000 pages of comments from multiple parties, many of which contained data submissions and economic analyses. Moreover, there was approximately a one-week delay before all of the comments were available on the Commission's Electronic Comment Filing System (ECFS). In the interest of developing a thorough and complete record in this proceeding, the Bureau grants the Petitioners' requests, and hereby extends the reply comment deadline to July 29, 2005. This extension should allow parties adequate time to review and respond to the record in this proceeding. All other filing requirements set forth in the NPRM remain in effect.

Ordering Clause

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), and §§ 0.91, 0.204(b), 0.291, 1.45, and 1.415 of the Commission's rules, 47 CFR 0.91, 0.204(b), 0.291, 1.45, and 1.415, the deadline for filing reply comments in response to the *NPRM is extended* to July 29, 2005.

Federal Communications Commission.

Tamara L. Preiss,

Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 05–14420 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 05–87]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on an Initial Regulatory Flexibility Analysis (IRFA) of the *Intermodal Order* concerning wireline-to-wireless number portability. The Federal Communications Commission will use the specific IRFA comments it receives in preparing a Final Regulatory Flexibility Analysis in connection with the *Intermodal Order* and in determining whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the Regulatory Flexibility Act (RFA).

DATES: Comments are due on or before August 19, 2005, and reply comments are due on or before September 6, 2005.

ADDRESSES: You may submit comments, identified by CC Docket No. 95–116, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fcc.gov*. Follow the instructions for submitting comments on the *http://www.fcc.gov/cgb/ecfs/*.
- E-mail: *ecfs@fcc.gov*.
- Mail: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Instructions: All submissions received must include the agency name and docket number for this proceeding. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fcc.gov/cgb/ecfs/*.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney Advisor, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice) or (202) 418–1169 (TTY) or Pam Slipakoff, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–7705 (voice) or (202) 418–0484 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission Public Notice released April 22, 2005, FCC 05–87. The full text of the Public Notice and its appendices is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th St., SW., Washington DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov/wtb*.

Synopsis of the Public Notice

On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded to the Federal Communications Commission the *Intermodal Order*, concerning porting between wireline and wireless carriers. *See United States Telecom Ass'n* v. *FCC*, 400 F.3d 29 (D.C. Cir. 2005). The Court determined that the Federal Communications Commission had failed to prepare a Final Regulatory Flexibility Analysis regarding the impact of the *Intermodal Order* on small entities, as defined by the RFA, which the Court found to have been required by the RFA, 5 U.S.C. 604. The Court accordingly directed the Federal Communications Commission to prepare the required Final Regulatory Flexibility Analysis, and stayed future enforcement of the *Intermodal Order* ''only as applied to carriers that qualify as small entities under the RFA'' until the agency prepares and publishes that analysis. 400 F.3d at 43.

In the Public Notice, to prepare to comply with the Court's direction, the Federal Communications Commission seeks comment on an Initial Regulatory Flexibility Analysis of the *Intermodal Order*. The Commission will use the specific IRFA comments it receives in preparing a Final Regulatory Flexibility Analysis in connection with the *Intermodal Order* and in determining whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the RFA. The Federal Communications Commission also expects to publish a document amending 47 CFR Part 52 at a later date, pursuant to the *Intermodal Order*, which the court held effectively amended the Federal Communications Commission's previous legislative rule.

This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved in the IRFA will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be

addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 603, the Federal Communications Commission has prepared this Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities of the rules and policies described in the *Intermodal Order* concerning wireline-to-wireless number portability. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the Public Notice. This is a summary of the full text of the IRFA. The full text of the IRFA may be found at Appendix A of the full text of the Public Notice. The Commission will send a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, this will be published in the **Federal Register**.

A. Need for, and Objectives of, the Rules

1. The *Intermodal Order* involved rules and policies aimed at ensuring wide availability of number portability for consumers across the country. By making it easier for greater numbers of consumers to switch freely among carriers, the *Intermodal Order* was intended to promote competition and encourage carriers to provide new services and lower prices for consumers. To obtain these objectives, the order required porting to any wireless carrier whose ''coverage area'' overlaps the geographic location of the original rate center associated with the number to be ported, provided that the porting-in carrier maintains the number's original rate center designation following the port. The order defined wireless ''coverage area'' as the area in which wireless service can be received from the wireless carrier.

B. Legal Basis for Rules

2. The *Intermodal Order* was authorized under § 52.23 of the Federal Communications Commission's rules, 47 CFR 52.23, and in Sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i), 201, 202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

3. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted, 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

4. In this section, we describe and estimate the number of small entities that may be affected by our action. The most reliable source of information regarding the total numbers of certain common carriers and related providers nationwide appears to be the data that the Federal Communications Commission publishes in its *Trends in Telephone Service* report. In addition, the SBA has developed size standards for small businesses within the commercial census category of Wired Telecommunications Carriers. Under this category, a business is small if it has 1,500 or fewer employees. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

5. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

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

7. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities.

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

''Other Local Service Providers'' are small entities.

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

9. Requiring porting beyond wireline rate center boundaries could impose compliance burdens on small entities. First, by making porting more widely available, the requirement may increase the amount of telephone numbers that small carriers may be required to port. To handle this increased porting volume, small carriers may need to add personnel, update porting procedures, or upgrade software. In addition to the compliance burdens associated with increased porting volume, porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches. We seek comment on the costs associated with these potential compliance burdens.

10. In addition to the impacts associated with transporting calls to ported numbers, by making it easier for more consumers to port, the requirements may cause small or rural carriers to lose customers. Small carriers have expressed concern that permitting porting beyond wireline rate center boundaries would give large wireless carriers an unfair competitive advantage over smaller LECs by making it easier for more consumers to port numbers to larger nationwide carriers.

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

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

12. The Federal Communications Commission has previously addressed concerns raised by small and rural carriers when considering intermodal portability issues. Specifically, the *Intermodal Order* considered limiting the scope of intermodal porting based on the small carrier concern that requiring porting to a wireless carrier that does not have a physical point of interconnection or numbering resources in the rate center associated with the ported number would give wireless carriers an unfair competitive advantage. The order found however, that these considerations did not justify denying wireline consumers the benefit of being able to port their numbers to wireless carriers. In addition, the order noted that each type of service offers its own advantages and disadvantage and that consumers would consider these attributes in determining whether or not to port their numbers. The *Intermodal Order* also considered the concern expressed by small carriers that requiring porting beyond wireline rate center boundaries would lead to increased transport costs. The order concluded that such concerns were outside the scope of the number portability proceeding and noted that the rating and routing issues raised by the rural wireline carriers were also implicated in the context of non-ported numbers and were before the Federal Communications Commission in other proceedings.

13. The order also, for wireline carriers operating in areas outside of the 100 largest MSAs, waived, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. The order noted that the transition period would help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems. The order also noted that carriers could file petitions for waiver of their obligation to port numbers to wireless carriers, if they could provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.

14. In addition to the steps taken by the Federal Communications Commission, pursuant to section 251(f)(2) of the Communications Act of 1934, as amended, carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide may petition state commissions to suspend or modify the LNP requirements. Under the terms of section 251(f)(2), the state commission shall grant such petition to the extent that, and for such duration as, the state commission determines that such suspension or modification: (A) Is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience, and necessity. Numerous petitions have been filed with state commissions since the *Intermodal Order's* release and in many of these cases, states have granted temporary or permanent relief from LNP requirements to small carriers. We seek comment on the effectiveness of this mechanism for addressing any potential burdens on small carriers.

F. Overlapping, Duplicating, or Conflicting Federal Rules

14. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14179 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05–195, CC Docket No. 96–45, CC Docket No. 02–6, WC Docket No. 02–60, WC Docket No. 03–109, CC Docket No. 97–21; FCC 05–124]

Comprehensive Review of Universal Service Fund Management, Administration, and Oversight

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission initiates a broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and the USF Administrator. We seek comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to the Universal Service Administrative Company (USAC or the Administrator), and exploring performance measures suitable for assessing and managing the USF programs. We also seek comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds.

DATES: Comments are due on or before October 18, 2005. Reply comments are due on or before December 19, 2005.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–195, CC Docket No. 96–45, CC Docket No. 02–6, WC Docket No. 02–60, WC Docket No. 03–109, CC Docket No. 97–21 and/or FCC 05–124, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- Mail: Filings should be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on this rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* in WC Docket No. 05–195, CC Docket No. 96–45, CC Docket No. 02–6, WC Docket No. 02–60, WC Docket No. 03–109 and CC Docket No. 97–21 released on June 14, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* (NPRM) we initiate a broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and the USF Administrator. In particular, we seek comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to the Universal Service Administrative Company (USAC or the Administrator), and exploring performance measures suitable for assessing and managing the USF programs. In addition, we seek comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds.

2. Our goal is to find ways to improve the program, both from the perspective of USF beneficiaries and from the perspective of safeguarding the fund itself. We recognize that some parties have raised concerns ranging from mismanagement to intentionally defrauding the program, and we take these concerns seriously. In this proceeding, we intend to address these concerns by finding constructive ways to continue meeting the needs of those who depend on the USF, while at the same time ensuring that the public is confident that the funds are used for their intended purpose. To accomplish this, we are seeking input from all interested parties, including experienced participants in the USF programs, on improving the management, administration, and oversight of the four universal service programs. We intend to determine whether any rule changes are necessary in order to manage and administer the USF programs more efficiently and effectively, while deterring waste, fraud, and abuse. We are interested in rule changes that can be applied, to the greatest extent possible, consistently across all programs. Furthermore, to the extent commenters' suggestions can be accomplished without rule changes, we may do so after evaluating the record in this docket.

II. Discussion

A. Management and Administration of the USF

3. In this section, we broadly seek comment on measures the Commission can take to improve management and administration of the program. The effectiveness and efficiency of our management and administration of the USF is influenced by the organizational structure used to carry out the missions of the USF, the methods used to measure and evaluate program performance, and the program operations, including the application process, the contributions process, and the disbursement process. We encourage parties to comment on the Commission's past practices and submit proposals for improving the management and administration of the program. We also invite comments and suggestions on any aspect of this NPRM from USAC, including its views on its performance as Administrator.

1. Universal Service Fund Administrator

a. Background

4. The Commission's rules provide for the appointment of a permanent Administrator of the USF. In 1998, the Commission appointed USAC the permanent Administrator of the federal universal service support mechanisms. Under the Commission's rules, the Administrator is responsible for administering each of the USF mechanisms. As part of its duties and subject to Commission rules and oversight, the Administrator bills contributors to the USF, collects USF contributions, disburses universal service support funds, recovers improperly disbursed USF moneys, submits periodic reports to the Commission (including quarterly reports on the disbursement of universal service support funds), maintains accounting records, conducts audits of contributors and beneficiaries, creates and maintains an Internet site, collects information, and provides access to information it collects to the Commission. Aggrieved parties may file appeals of actions taken by the Administrator. Under the Commission's rules, USAC is required to maintain its books of account in accordance with generally accepted accounting principles (GAAP) and to account for the financial transactions of the USF in accordance with government generally accepted accounting principles (GovGAAP). The Administrator must also maintain the accounts of the USF in accordance with the U.S. Government Standard General Ledger (USGSGL). Pursuant to Commission rules, the Administrator is prohibited from making policy, interpreting unclear provisions of the statute or the Commission's rules, or interpreting the intent of Congress, and may only advocate positions before the Commission and its staff on administrative matters.

B. USF Administrative Structure

5. We seek comment on whether modifications to our rules are needed to ensure efficient, effective, and competitively neutral administration of the USF. The Commission appointed USAC the permanent Administrator ''subject to a review after one year by [the Commission] to determine that the Administrator is administrating the universal service support mechanisms

in an efficient, effective, and competitively neutral manner.'' The Commission intended to review USAC's performance after one year; however, the one-year review did not take place. We therefore seek comment on USAC's performance since the inception of the USF program, as well as the Commission's management and oversight of USAC. We seek comment on whether USAC has administered the USF in an efficient, effective, and competitively neutral manner. In addition, we seek comment on whether additional rules or amendment of existing rules are needed to provide clarity to the scope and content of the Administrator's functions. Commenters should address USAC's successes as well as any weaknesses in USAC's performance or areas that need improvement.

6. *Administrative Structure.* We take this opportunity to evaluate the current administrative structure to determine whether any changes are needed in order to enhance management of the USF. Commenters should discuss whether their experience in other government programs suggests a more effective mechanism for administering a subsidy program the size of the USF. We seek comment on whether we should replace the permanent, designated Administrator with another type of administrative structure or entity. For example, we could retain USAC as Administrator pursuant to a contract or subject to a Memorandum of Understanding. We could seek competitive bids for another entity to administer the USF, subject to replacement after a period of time. Alternatively, we could appoint a different entity or organization to permanently administer the USF instead of USAC, or we could retain the current structure for USF administration so that USAC would continue to administer the USF. If we retain the current structure for USF administration, how can we improve the Commission's oversight of the USF and management of the program? Commenters should address the pros and cons of a permanent administrative entity as well as the pros and cons of alternative administrative structures and arrangements. Commenters should discuss the advantages and disadvantages of competitive procurement and of having the same entity administer the USF programs over a lengthy period of time. We seek comment on whether USAC should apply, to the extent practicable, the policies and procedures embodied in the Federal Acquisition Regulation (FAR). Commenters should also discuss how Commission oversight would be implemented if alternative arrangements were adopted.

7. In addition, we seek comment on whether using a not-for-profit corporation as the permanent Administrator of the USF has worked successfully. Commenters should address the pros and cons of using a not-for-profit entity as the USF Administrator. We note that the Commission has experience using contracts to administer certain programs. For example, section 251(e) of the Act directs the Commission to ''create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.'' The Commission concluded that it was free to select the National Pooling Administrator on a competitive basis, as it did in choosing the North American Numbering Plan administrator in 1997. The entities that administer telecommunications numbering and thousands block number pooling for the Commission do so pursuant to a contract and we believe that such contracts have provided certain cost benefits, such as the lower costs that can be achieved through the competitive bidding process.

8. Part 54 of the Commission's rules are designed to promote universal service in a competitively neutral manner. The Commission's rules apply a number of requirements to the USF Administrator to ensure effective, efficient, competitively neutral administration. This ensures that support is made available on a technologically neutral basis to eligible service providers. The Commission concluded, when appointing USAC permanent administrator, that ''subject to the modifications set forth in this Order, USAC fairly represents all interested parties, including a broad range of industry, consumer, and beneficiary groups.'' We seek comment on how any proposals to change the current administrative structure would affect the independence and neutrality of the USF program administration. The Commission's rules provide for an experienced Board of Directors representing a balance of different interests. The Commission's rules describe the functions of USAC, which are limited to ''administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism, the low income support mechanism, the interstate access universal service support mechanism * * * and the interstate common line support mechanism.'' In addition, USAC is responsible for ''billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.'' The rules also prohibit USAC from making policy or interpreting the intent of Congress, and bar USAC from lobbying on anything other than administrative issues. We seek comment on whether we should modify our rules to more clearly delineate USAC's administrative functions.

9. We seek comment on whether we should modify our rules addressing meetings of the Administrator's Board of Directors. We seek comment on whether the current board composition results in effective, efficient, and competitively neutral management of the USF. Commenters should provide specific recommendations for modifying the composition of the Administrator's Board of Directors and describe the benefits of implementing such proposals. Section 54.705 of the Commission's rules requires USAC to have three committees: A Schools and Libraries Committee, a Rural Health Care Committee, and a High Cost and Low Income Committee. We seek comment on whether additional committees or fewer committees would be administratively efficient and useful. USAC also has an audit committee, an investment committee, and an executive committee, which are not required by our rules. We seek comment on whether we should revise the rules to clarify or specify the organizational structure of the Administrator's committees.

10. We also seek comment on whether we should adopt rules to require the Administrator to implement ethics standards and procedures for addressing conflicts of interest, or if we should adopt specific rules governing the ethics standards and conflicts of interest for officers and/or employees of the Administrator. We seek comment on whether to adopt rules addressing the Administrator's procedure for handling confidential information, including confidential information related to the federal government. Finally, we seek comment on whether the Administrator's Board of Directors should be permitted to enter into closed sessions in which the Commission and members of the public are excluded. Although the Commission's rules state that all meetings of the Administrator's Board of Directors are to be public, there may be instances where a private meeting is warranted. Should we adopt procedures and rules to identify appropriate instances of when the Administrator's Board of Directors may

hold a closed sessions? If so, what should those instances be?

11. *Filing and Reporting Requirements.* Under our rules, the Administrator must submit periodic reports to the Commission. Section 54.702(g) of the Commission's rules requires USAC to submit an annual audit report. Section 54.709(a) of the Commission's rules requires USAC to submit, 60 days prior to the start of the quarter, financial and accounting data, including projected administrative expenses and projected program demand (*i.e.,* amount of moneys USAC expects to disburse in the upcoming quarter for each USF mechanism). Section 54.709(a) of the Commission's rules also requires USAC to submit, 30 days prior to the start of each quarter, its estimate of contributor base. USAC prepares and submits additional reports, both to the Commission staff on an ad hoc basis and to its Board of Directors on a quarterly basis. We seek comment on whether we should revise the content or frequency of the Administrator's reports. For example, we could require these reports be filed on a monthly, quarterly, or annual basis. We seek suggestions from USF stakeholders about the appropriate types of publicly available information that we should require from USAC. For example, should we require publicly available, periodic performance measurement and financial reports?

12. The Bureau calculates the proposed quarterly contribution factor, based on USAC's submissions, and announces it in a Public Notice fourteen days before the beginning of each quarter. This proposed contribution factor is deemed approved when the fourteen-day period ends, if the Commission takes no action to change the contribution factor. USAC uses the contribution factor to bill carriers on the sixteenth of each month during the quarter. USAC requires carriers to pay their invoices by the fifteenth of the following month. We seek comment on whether we should revise our rules to change any of these time periods or to modify the content of USAC's filings.

13. *Contributor Delinquency.* We also seek comment on whether we should revise our rules to address the issue of a carrier's delinquent contributions. Should we adopt a rule on how a carrier's payments are assigned to current and delinquent amounts due the Administrator? The Administrator's practice is to apply partial payments to the oldest debt first, instead of the current billed amount. Should we direct USAC to modify this practice? We also seek comment on whether we should adopt rules to allow USAC to charge interest and assess penalties for a carrier's failure to file the FCC Form 499–A, Telecommunications Reporting Worksheet (Form 499–A).

14. *Borrowing Funds.* Our rules currently provide that USAC ''shall request borrowing authority from the Commission to borrow funds commercially'' if contributions received in a given quarter are inadequate to meet the amount of universal service program payments and administrative costs for that quarter. We note that USAC has never requested such authority nor has the Commission authorized such borrowing. Is § 54.709(c) of the Commission's rules, to the extent it authorizes borrowing of funds to pay for the USF, inconsistent with federal financial accounting rules that apply to the USF? We seek comment on whether we should eliminate this rule. We think it is unlikely that the Commission would be unable to meet program payment requirements and administrative costs in any quarter because we evaluate the program demand (including administrative expenses) before we establish the contribution factor and we can control to a large extent the amount of USF disbursements in a given quarter. Nevertheless, we believe that we should consider and account for that contingency.

15. Moreover, we note that to the extent we modify our rules to permit other entities to administer the USF, there may be a need to permit borrowing under certain circumstances, *e.g.*, for administrative expenses or other non-program reasons and without jeopardizing program funds. We therefore seek comment on what process to establish, in lieu of the existing borrowing authority in § 54.709(c) of the Commission's rules, to address situations in which the amount of available USF is insufficient to accommodate program demand and administrative expenses. For example, we could maintain a cash reserve that would be used only in that event. At the same time, given the relatively low risk of the occurrence, we question whether it would be prudent to tie up funds for that purpose. We seek comment on what an appropriate reserve level would be. We have no rules regarding interfund borrowing. Should we adopt a rule prohibiting or allowing interfund borrowing? We seek comment on whether to establish limitations or constraints on the Administrator's ability to borrow funds in permissible circumstances and in a manner consistent with federal law. We seek comment on other ways to ensure that universal service funds are sufficient to cover costs and administrative expenses. For example, in the event that funds are insufficient to cover costs and administrative expenses, should we seek to collect additional funds and postpone payments until sufficient funds have been received? We also seek comment on the potential impact that any such proposal could have on fund beneficiaries. Finally, we seek comment on whether the Commission should adopt rules or requirements governing the investment practices and policies of the Administrator. For example, should we adopt requirements restricting USAC investments to non-interest bearing accounts or Treasury bills?

16. *Administrative Procedures.* We seek comment on whether we should codify certain USAC administrative procedures in the Commission's rules. In the *Schools and Libraries Fifth Report and Order,* 69 FR 55097, September 13, 2004, we directed USAC to identify all Schools and Libraries program procedures and we are currently evaluating USAC's list. As we discussed in the *Schools and Libraries Fifth Report and Order,* we are concerned about recovery of funds disbursed after applicants failed to follow USAC administrative procedures. Certain USAC procedures have since been incorporated into the Commission's rules. This issue has not yet been raised in the context of administrative procedures related to contributions or in the context of the High Cost, Low Income, and Rural Health Care programs. Under the Commission's rules, the Administrator may not ''make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.'' To assist our analysis, we will require USAC to file a list of its administrative procedures for the contributions process and the High Cost, Low Income, and Rural Health Care programs as an ex parte filing in this proceeding, by September 19, 2005. USAC's administrative procedures may involve collection or disbursement policies and practices that affect beneficiaries and service providers. We believe that there is a fundamental difference between ministerial errors and intentional fraud, and that greater clarity in USAC's rules and procedures will help reduce ministerial errors. We seek comment on how a beneficiary's compliance or lack of compliance with USAC non-codified administrative procedures should be treated in the auditing context. We are seeking proposals from commenters as to whether any of USAC's procedures or policies should be codified. We anticipate that it will be useful to

continue to evaluate whether other USAC administrative procedures should be codified into our rules. We ask that commenters consider whether any proposal for the Commission to codify USAC administrative procedures, or other proposals in this NPRM, would facilitate or restrict the ability of the administrator to perform its duties in a flexible and responsive way.

17. *Continuity of Operations.* Federal agencies are required to develop continuity of operations (COOP) plans to ensure that essential services will be available in emergency situations. Disruptions from a variety of sources, including severe weather conditions, can result in interruptions in services. We seek comment on whether we should adopt a rule to require USAC to develop and maintain a COOP plan for dealing with emergency situations. We also seek comment on whether any modifications to our rules are needed to ensure that the Administrator can continue to perform its mission-critical functions in the event of an incident or emergency situation. Commenters should describe the pros and cons of any proposals.

2. Performance Measures

18. We recognize that effective program management requires the implementation of meaningful performance measures. Clearly articulated goals and reliable performance data allow the Commission and other stakeholders to assess the effectiveness of the USF programs and to determine whether changes are needed. The Commission is in the process of compiling USF performance measures, particularly for the Schools and Libraries program and the High Cost program, in order to comply with the Office of Management and Budget (OMB) Program Assessment Rating Tool (PART) requirements. We seek comment on additional performance measures and goals that we can use to track progress and efficiency for all the universal service programs. Proposed performance measures should be highly relevant in measuring program value, accomplishments, and results. We also seek comment on whether we should establish specific performance goals or targets for the Administrator or for participants in the USF programs. We must be careful to measure only the goals of the program and not stray beyond our jurisdiction. Under the Act, universal service is defined as an ''evolving level of telecommunications services'' that includes advanced services. For the various USF programs, we should focus on measuring access to an evolving level of telecommunications services in the performance measure context.

19. The OMB's PART guidance sets forth three types of performance measures: (1) outcome measures, (2) output measures, and (3) efficiency measures. Outcome measures ''describe the intended result from carrying out a program or activity.'' Output measures describe the level of activity, such as applications processed, number of housing units repaired, or number of stakeholders served by a program. Efficiency measures capture a program's ability to perform its function and achieve its intended results relative to the resources expended. These performance measurements should be intrinsically linked to the purpose of the program and the strategic goal to which it contributes. The GAO has also published a number of reports addressing the use of performance measures in the management of government programs. We seek comment on establishing the most useful and valid outcome, output, and efficiency measures for the USF and each of its mechanisms, as well as the administration of the program. Commenters should address the objectives of any recommended performance measurements and goals. Commenters should also discuss whether we should revise our information collection process, including any of the forms applicable to the USF mechanisms, in order to collect sufficient information to measure the performance of the programs and identify potential areas for program improvement.

20. *E-Rate.* We seek comment on suitable outcome, output, and efficiency measures for the E-rate program. In the past, the Commission used the percentage of public schools connected to the Internet as a measure of the impact of the E-rate program and its success, and we seek comment on continuing to use connectivity as a measurement. As prescribed in section 254(h) of the Communications Act, the statutory goal of the E-rate program is to provide discounts to eligible schools and libraries for educational purposes. The Commission used this goal in developing and submitting its prior PART analysis to the OMB. We seek comment on the value of continuing to use this goal for the purposes of measuring the impact of the E-rate program. We seek comment on whether we should also measure the connectivity of libraries or private schools. We seek comment on whether alternative or supplemental goals may be more appropriate than connectivity. Universal service is an ''evolving level of telecommunications services'' that includes advanced services. We seek comment on how we can take the evolving level of services into account in adopting performance measures. We also seek comment on ways to measure the extent to which broadband services have been deployed to classrooms, through the E-rate program. One possibility for measuring the impact of E-rate moneys on schools and libraries would be to collect data on the use of E-rate supported services. For example, we could measure the number or percentage of students that access the Internet or the number or percentage of teachers using supported services in their classrooms. Likewise, we could measure the number or percentage of library patrons who use supported services during a library visit. We seek comment on relevant performance measures for the E-rate program. We note that the Department of Education already collects information on the use of the Internet in classrooms, but does not collect information on broadband. We do not want to expend resources for a repetitious inquiry. We therefore seek comment on how we should design performance measurements to measure broadband connectivity. Commenters should also propose definitions of ''broadband'' for our performance measurements. We also seek comment on how we can be sure to measure only schools and libraries that get support from the program, rather than measuring all schools and libraries. Furthermore, we seek comment on how the Commission can determine which schools currently have no connectivity at all so that we can improve the program by reaching these unconnected schools.

21. We note that the U.S. Department of Education uses performance measures to evaluate the implementation of the Enhancing Education Through Technology (EETT) program. The EETT program funds initiatives that are designed to integrate technology into classrooms in ways to improve the academic achievement of students. These performance measures allow the Department of Education to respond to Government Performance and Results Act (GPRA) reporting requirements. We seek comment on whether these measures are instructive for E-rate purposes.

22. We also seek comment on meaningful ways to distinguish the impact of E-rate funds from other governmental and non-governmental programs that support services or facilities similar to the E-rate program. Is there an effective way to isolate and

measure the impact of the E-rate program on schools and libraries?

23. We also seek comment on ways to measure the efficiency and effectiveness of the E-rate program. For example, we could implement a measurement to capture the cost in E-rate funds disbursed per student or library patron. We note that the timing of the Commission's and USAC's processes may be critical to schools and libraries. Lengthy intervals for processing or reviewing applications could have a disruptive effect on the budget or procurement schedule for schools or libraries. Delay can complicate the USAC application process for schools and libraries, leading to ministerial errors on subsequent applications, complicating auditing, and undermining our ability to combat waste, fraud, and abuse. We seek comment on timing issues that need improvement. Commenters should discuss particular deadlines that should be modified. Should we create new deadlines for Commission or USAC action in various phases of the E-rate process? Should we set deadlines for progressing from the completion of an application to the funding commitment decision letter (FCDL), or for completion of appeals? In submitting their responses and proposals, commenters should focus on the need, if any, to modify our information collection processes, and the burden any such modification would place on stakeholders in the program, particularly small entities.

24. *High Cost, Rural Health Care, and Low Income.* We also seek comment on adopting meaningful outcome, output, and efficiency measures for the High Cost, Rural Health Care, and Low Income programs. Because these mechanisms have different goals and purposes than the E-rate program, we expect to adopt different performance measures and goals for each program. We note that participants in each USF mechanism may receive support from other sources (*e.g.*, loans from the Department of Agriculture's Rural Utility Service or the Department of Education) or may seek USF support for only a portion of their telecommunications needs. We seek comment on whether and how we should account for these factors in crafting performance measurements for each of the mechanisms so we can evaluate the impact of each USF dollar disbursed. Commenters should suggest measures for each of the statutory goals listed in section 254(b)(3) of the Communications Act: ''Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.'' We also seek comment on ways to measure the efficiency of each support mechanism. How do we best determine whether the programs are accomplishing the statutory goals in a cost-effective manner? Relevant performance measures for the Low Income program may include the percentage of eligible households that receive low income support and telephone subscribership rates for low income consumers. We seek comment on these suggestions and we request commenters to submit alternative proposals for performance measures. Suitable performance measures for the High Cost program may include telephone subscribership in rural areas (and comparing such rates to telephone subscribership in urban areas) or the comparability of rural and urban rates. We seek comment on these possibilities and request parties to submit alternative proposals for performance measures. Relevant performance measures for the Rural Health Care program may determine the comparability of rural and urban rates, the number or percentage of eligible rural health care providers receiving USF support, and the number of patients served by rural health care providers participating in the program. We seek comment on these possibilities and request parties to submit alternative proposals for performance measures.

25. *USF Administration.* Finally, we seek comment on establishing suitable performance measurements for evaluating the administration of the USF program. Under the Commission's rules, the Administrator is responsible for performing certain functions under the Commission's oversight. In particular, the Administrator bills contributors, collects USF contributions, disburses USF moneys, and administers the USF's accounts and transactions. When the Commission appointed the permanent Administrator, we noted our expectation that the Administrator would perform its duties in an efficient, effective, competitively neutral manner. Although the Commission adopted various reporting requirements applicable to the Administrator, it did not adopt metrics to measure the Administrator's performance of its duties. Relevant performance measures may include the number of applications for USF support processed within a particular period of time, the percentage of applications rejected by the Administrator for errors or other reasons, the average number of days required to process an application, the accuracy of bills issued to contributors, or the number of errors made in disbursing funds to USF beneficiaries. We seek comment on these possibilities and request that commenters submit alternative proposals. We also seek comment on ways of measuring how cost-effectively the Administrator operates.

3. Program Management

26. We seek comment from all interested parties on ways we can improve the management, administration, and oversight of the USF programs, including the billing and collection process and the process of disbursing funds. We welcome input from service providers, beneficiaries, and others who have had experience with the USF programs. We also seek comment from other agencies and governmental entities about their experiences with program administration and management that may offer guidance in the context of the USF programs. We seek comment on the accessibility of our applications and disbursement processes for persons with disabilities. We recognize that our efforts to improve USF management may entail an administrative burden on USF program participants, and we invite comment on ways to achieve more efficient administration and management, while continuing our efforts in deterring waste, fraud, and abuse.

27. We seek comment on whether the E-rate and Rural Health Care distribution processes should more closely track those of the High Cost and Low Income programs. For example, we could change our rules to use a formula to distribute funds directly to schools and libraries according to their size and allow funds to be used in a more flexible way, *e.g.*, for communications-related services and equipment, or training on how best to use such service and equipment, rather than requiring applications that identify needed services and equipment and their cost. Would such a formulaic approach further the goals of the program? Would it create substantial additional challenges? We believe that any changes should not disadvantage stakeholders, including private, parochial, rural, and economically-challenged schools or libraries. We seek comment on whether a formulaic approach would

disadvantage stakeholders of these programs. We also seek comment on whether a formulaic approach would make detecting waste, fraud, and abuse more difficult.

a. Application Process

(i) E-Rate

28. Under the Schools and Libraries program, eligible schools, libraries, and consortia that include eligible schools and libraries, may receive discounts for telecommunications services, Internet access, and internal connections. The schools and libraries support mechanism is capped at $2.25 billion annually; however, annual requests for funds frequently exceed the annual cap. Applicants may receive discounts ranging from 20 to 90 percent of the price of eligible services, based on indicators of need, *i.e.*, percentages of students eligible for free or reduced price lunch through the National School Lunch Program, or a federally approved alternative mechanism. In addition, rural applicants receive enhanced discounts, ranging from 25 to 90 percent of the pre-discount price for the eligible services.

29. The application process generally begins with a technology assessment and a technology plan. After developing the technology plan, the applicant must file the FCC Form 470 (Form 470) to request discounted services such as tariffed telecommunications services, month-to-month Internet access, cellular services, or paging services, and any services for which the applicant is seeking a new contract. The Form 470 must be posted on USAC's schools and libraries division Web site for at least 28 days. The applicant must then comply with the Commission's competitive bidding requirements set forth in §§ 54.504 and 54.511(a) of the Commission's rules. The applicant then files the FCC Form 471 (Form 471), after entering into agreements for eligible services.

30. After receiving the Form 471, USAC assigns a ''funding request number'' to each request for discounted services. USAC reviews the Form 471 and then, if the request is approved, issues funding commitment decision letters advising the applicants of the discounts that the applicants will receive under the rules. The FCC Form 486, Receipt of Service Confirmation Form (Form 486), is filed after the school or library begins to receive the service from the vendor. The FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form may be filed if the school or library needs reimbursement of discounts due on approved services for which it has paid full price. Alternatively, the applicant can pay only the non-discounted portion of the bill and the vendor can seek reimbursement from USAC by filing the FCC Form 474, Service Provider Invoice Form (Form 474).

31. *Application Process.* We seek comment on the application process for obtaining support from the schools and libraries mechanism. In particular, we seek proposals on ways to improve the administration of the application process while maintaining an effective review system to ensure that USF moneys are disbursed properly. We invite suggestions for streamlining the application process, such as shortening, combining, or eliminating forms. Commenters should discuss, for example, whether we should streamline applications for priority 1 services, establish a different application cycle for applicants with repeat requests, or limit the current application form to applicants seeking priority 2 services and develop a simpler application process for priority 1 services. We seek comment on whether the burden on applicants would be reduced by creating a streamlined form for certain circumstances and only requiring full applications when changing technology plan criteria or ordering new services. It appears, based on the information we have at this time that relatively few instances of waste, fraud, and abuse occur in requests for priority 1 services. We tentatively conclude that we should adopt a streamlined multi-year application for priority one services. Commenters should address whether such a streamlined process may create the potential for waste, fraud, and abuse, and if so, how we can mitigate such risk. We seek comment on whether the complexity of the application process leads some small schools and libraries to choose not to participate in the E-rate program. In addition, we seek comment on whether the Administrator should provide applicants and service providers more, or less, information regarding the status of applications and if we should establish deadlines or target dates for processing applications. We note that there may be practical limitations to establishing firm deadlines for processing applications, which are typically submitted in batches. We ask commenters to consider these concerns in their comments. We also seek comment on suggestions for using technology to improve the application process, such as receiving electronic-only notifications and status reports. Commenters should discuss the costs and benefits of alternative proposals or modifications to the current system.

32. The timing of various parts of the USAC and Commission processes is critical to schools and libraries, many of which operate according to strict State or municipal budget and procurement schedules. When USAC or the Commission cause delay, schools and libraries can be thrown off their mandated budget or procurement schedules. This can have a significant negative impact on schools' and libraries' ability to achieve connectivity goals. Sometimes delay can complicate the USAC application process for schools and libraries, leading to ministerial errors on subsequent applications, complicating auditing, and undermining our ability to combat waste, fraud, and abuse. What are the timing and delay issues that the Commission should address in this proceeding? How can we improve timing problems and delays? While the dedicated staffs of USAC and the Commission work hard, do USAC and the Commission have adequate staff resources to combat delay? Should we create new deadlines for Commission or USAC action in various phases of the E-rate process? Current deadlines for resolution of appeals are rarely met. How can we improve? Should we set deadlines for particular phases of the USAC and Commission process, such as deadlines for progressing from the completion of an application to FCDL, or for completion of appeals at the Commission?

33. We seek comment on what guidance, if any, we should provide to define a completed application for E-rate money. We note that, since the inception of the program, parties have experienced problems with meeting the requirement to submit a complete application during the filing window. The Administrator has rejected applications that were not complete, including applications that were not signed. We seek comments on what rules, if any, we should adopt to provide clarity to program applicants. In addition, we seek comment on whether to establish minimum processing standards with which the Administrator must comply (*e.g.*, requiring the Administrator to verify that the applicant's technology plan was signed by an authorized entity). We note that failure to sign an application may implicate law enforcement activity, as well as the enforcement of the Commission's governing rules.

34. *Competitive Bidding.* We seek comment on modifying our current rules requiring competitive bidding. In particular, we request commenters to

submit alternative proposals or suggestions for improving our competitive bidding rules to ensure that program participants obtain the best value for USF support provided. We seek comment on whether to limit the obligation to issue a competitive bid should apply only to applications above a particular dollar value threshold. Would this be an appropriate way to balance administrative burdens on applicants with the need for competitive bids? We seek comment on the process for establishing and administering the eligible services list. We seek comment on the pilot on-line eligible products list that USAC established pursuant to a Commission order, and whether this project has materially streamlined or simplified the application process. Commenters should discuss ways to handle the list of eligible services in a more administratively efficient way, while at the same time ensuring that USF moneys are provided only for eligible services. Commenters should also discuss whether we should publish service life, or depreciation, guidelines for equipment. In addition, we seek comment on how the E-rate technology planning process can be reviewed in accordance with other federal technology planning requirements. We also seek comment on whether the Good Samaritan E-rate program policy is an efficient method of disbursing funds.

35. *Forms.* Commenters should discuss the Forms 470, 471, 472, 473, 474, 486, and 498 and address whether more or less information should be required on these forms, if any of these forms could be consolidated or eliminated, and if any other forms would be helpful. We seek comment on whether the Form 470 facilitates the competitive bidding process, and whether our rules should continue to require this form and its public disclosure. We seek comment on whether forms can be combined in an effort to improve the process, *e.g.,* combining the Form 472 and Form 474. We note that the Bureau is proposing revisions to the Forms 472, 473, and 474 in order to combat waste, fraud, and abuse. We seek comment on the certification requirements in the E-rate forms. Specifically, commenters should discuss whether we should revise the Form 473, so that the applicant paying on an installment plan would be required to certify that, as of the time of the final invoice payment, all of the services covered by the invoice or invoices had been provided. In addition, commenters should discuss how we can ensure that the certifications by the applicant and the service provider in the Form 472 are executed independently. Commenters should also discuss whether we should add a signature requirement to the Form 474. We also seek comment on whether any of these forms should be optional.

36. *Timing of Application Cycle.* Commenters should address whether we should better synchronize the application and disbursement process with the planning and budget cycles of the schools and libraries benefiting from this program. For example, the instructions to the Form 471 state: ''Provide the number of students eligible for the National School Lunch Program (NSLP) as of the October 1st prior to the filing of this form, or use the most current figure available.'' Commenters should discuss whether this date for data, October 1st or the most current, is reasonable, or if a different date should be used. We seek comment on whether there are inconsistencies between Commission rules (or USAC procedures) and state or municipal rules, including state or municipal procurement rules. Commenters should discuss ways to reconcile any such inconsistencies. We seek comment on whether an annual application cycle is necessary or whether it would be more efficient to permit multi-year application cycles. Commenters should address the costs and benefits of an annual cycle or multi-year cycle.

37. *Service Providers and Consultants.* We seek comment on the process as it pertains to service providers and consultants. We specifically seek comment on whether we should establish certain criteria, such as quality standards or standards of conduct, for participating service providers and consultants. Adopting quality standards or standards of conduct for service providers and consultants could help deter waste, fraud, and abuse by, for example, ensuring program participants maintain effective procedures for complying with our rules. In addition, we seek comment on whether we should impose specific standards or a certification process for consultants for E-rate and consultants used by other USF beneficiaries. Commenters should also discuss any other measures we should adopt to deter fraudulent actions by service providers or consultants. Commenters should discuss the costs and benefits for any proposal submitted.

(ii) High Cost

38. The High Cost support mechanism provided approximately $3.4 billion in support in fiscal year 2004. Under the statute and the Commission's rules, only Eligible Telecommunications Carriers (ETCs) may receive High Cost support. Under section 214(e) of the Act, a state commission can designate a common carrier as an ETC for a service area designated by the state commission. An ETC is eligible for universal service support and must offer the services supported by universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services. In addition, the ETC must advertise the availability of such services.

39. The High Cost support mechanism is made up of five components: high cost loop support, local switching support, interstate access support, forward-looking, or model, support for non-rural carriers, and interstate common line support (ICLS) for rate-of-return carriers. A telecommunications carrier seeking High Cost support for the first time must do the following: (1) obtain a service provider identification number (SPIN) by using Form 498, (2) obtain ETC status and submit a copy of the ETC designation order to USAC, (3) submit line count information, (4) have a valid certification on file, and (5) submit the Forms 499–A and 499–Q, in which the carrier reports interstate and international end user telecommunications revenue.

40. We seek proposals from stakeholders on ways to improve the High Cost program application process and participation by reducing or eliminating the administrative burden on carriers. Commenters also should discuss whether we should permit High Cost carriers to file annual, biannual, or triennial applications for support to provide for a more efficient administration of the High Cost program while minimizing the burden on carriers. Because support levels may change from year to year, a multi-year process, with annual true-ups and filing revisions, could cause administrative burdens on the Administrator and the carriers. If we adopt a multi-year application process, should we make it mandatory? If not, should we require carriers that opt for a multi-year process to retain the same level of support over the multi-year term, without an opportunity for true-up?

41. We seek comment on whether any rule changes are needed to permit the High Cost support mechanism to operate in a more efficient and effective manner while ensuring that USF moneys are used for their intended purpose. Should we adopt forms in lieu of the ''Line Count Sample Letters'' available on USAC's Web site? Is there additional information we should collect from carriers to prevent waste, fraud, and abuse? We also seek

comment on whether the Commission should adopt additional standards or deadlines (applicable either to carriers or the Administrator) to ensure more efficient management of this program. Commenters should discuss the costs and benefits of alternative proposals or suggestions. We note that our rules pertaining to the High Cost support mechanism are contained in both part 36 and part 54 of the Commission's rules. We seek comment on whether we should modify our rules to consolidate all High Cost program rules in a single section.

42. *High Cost Loop Support.* We seek comment on whether we should modify the administrative process for participating in the High Cost Loop support mechanism. Specifically, we seek comment on whether we should modify the timing and the content of the reporting requirements imposed on High Cost companies for the purpose of administering the High Cost loop support mechanism. Local exchange carriers (LECs) receiving this support are required to submit certain investment and expense data, including line count information, to NECA on July 31 of each year for participation in the High Cost loop support mechanism. Non-rural High Cost carriers must submit updated data quarterly. Rural High Cost carriers may voluntarily submit updated data. Currently, NECA processes the information and performs the necessary calculations, but does not provide the supporting documentation to USAC. Does this lack of supporting information impede auditing efforts? We seek comment on whether investment and expense information should be submitted to USAC in addition to or instead of NECA. We also seek comment on whether we should revise or clarify the calculation of line count information; for example, should we use an average annual line count instead of an end-of-year line count? In addition, we seek comment on whether we should make the voluntary update filings requirement mandatory, or eliminate this requirement altogether. We also seek comment on whether we should harmonize the filing dates and requirements so that rural and non-rural companies are subject to the same deadlines and billing requirements.

43. High Cost loop support and local switching support are based on an incumbent LEC's costs at the study area level. Rural carriers submit line count information at the study area level. We also seek comment on whether we should revise § 36.611 of our rules, which describes the data collection requirements applicable to High Cost carriers. Commenters should discuss whether revisions to NECA's data collection form are needed in order to accomplish the goals of the program. Finally, we seek comment on whether we should modify the quarterly reporting requirement for rural High Cost LECs in whose service area a competitive ETC has initiated service and reported line count data. These LECs must update their line count data quarterly (but not the investment and expense data). We invite comments and proposals on what measures we can implement to balance the filing burden on High Cost companies with our need for information to run the program.

44. *Local Switching Support.* We seek comment on the administrative process pertaining to the Local Switching Support mechanism, including the timing of and scope of the information submitted by program beneficiaries to administer this program. A cost company serving fewer than 50,000 lines must submit the Form LSSc, an average schedule company serving fewer than 50,000 lines must submit the Form LSSa. We seek comment on these forms. We seek comment on whether we should shorten, combine, revise, or eliminate these forms. Commenters should discuss whether we should revise § 54.301 of the Commission's rules to limit projected growth in accounts based on actual past performance. In addition, commenters should discuss any other revisions to the LSS data collection form and whether the quantity and timing of information requested is appropriate. The Commission's rules require incumbent LECs receiving Local Switching Support to provide data to the Administrator by October 1st of each year. We seek comment on this process and specifically on the deadlines for submitting Local Switching Support data. We seek comment on whether carriers should receive a pro-rated portion of LSS, if the LSS information is filed late. We also seek comment on whether we should adopt rules to ensure the accuracy and reliability of these data. We seek suggestions for improving the process while at the same time promoting measures to ensure that Local Switching Support is used for appropriate purposes.

45. *Interstate Access Support.* Only price cap carriers or competitive LECs serving in the area of a price cap carrier are eligible for Interstate Access Support. Price cap carriers must submit information on line counts, revenue information, UNE zone rates and UNE zone maps, and carrier certification. Line counts are the number of lines served within each price cap LEC study area in which it serves. We seek comment on the application process, the timing and scope of the information carriers must file, and whether we should impose greater or lesser reporting requirements on participants. We seek comment on whether we can administer Interstate Access Support with less information than we currently collect and still ensure that funds are used appropriately.

46. *Forms.* Applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these consist of statements certifying that information provided on the forms themselves are accurate and complete, and that funds received will be used for their intended purpose. We invite comment on whether the certification language in existing forms that must be submitted by applicants are sufficient to ensure that funds are used in their intended manner, in the absence of waste, fraud, and abuse. Would additional forms or modified language in existing forms further protect the high-cost universal service support mechanisms against waste, fraud, and abuse? We request that commenters propose specific additional certification language they believe would further these goals, along with an explanation why the current certification language is insufficient. We also seek comment on the administrative burden (particularly on rural and small entities) of any proposed new forms and certifications.

(iii) Low Income

47. The Low Income program provided approximately $800 million to carriers in fiscal year 2004 in order to promote subscribership among people of limited means. Only ETCs are eligible to receive Low Income support. In our *Lifeline/Link-Up Report and Order,* 69 FR 34590, June 22, 2004, we observed that only one-third of the households currently eligible for Lifeline/Link-Up assistance actually subscribe to this program. In that proceeding, we expanded the eligibility criteria and adopted federal certification and verification procedures to minimize potential abuse of these programs. We also adopted outreach guidelines to target low income consumers more effectively.

48. The Lifeline program reimburses carriers for discounting low income consumers' monthly telephone bills. This program allows low income consumers to save up to $10.00 per month on their telephone bills. Low income consumers living on tribal lands may qualify for additional monthly discounts ranging from $30.25 to $35.00. The Link-Up program

reimburses carriers for providing discounted connection charges to eligible low income consumers. Qualifying consumers are eligible to save up to 50 percent on installation fees (not to exceed $30). Low income consumers living on tribal lands may qualify for a discount of up to an additional $70.

49. We seek comment on the process for participating in the Low Income support mechanism. In particular, we seek comment on whether we should revise the information requested and the frequency of carrier submissions. Carriers must submit the FCC Form 497, Lifeline and Link-Up Worksheet (Form 497), for reimbursement. In the Form 497, carriers report the number of Lifeline and Link-Up customers served, for each tier of support. This form must be submitted quarterly, by April 15th, July 15th, October 15th, and January 15th of each year. Commenters should discuss whether we should simplify the application process to require annual or semi-annual reporting instead of quarterly reporting. Low income rules appear in both part 54 and part 36 of our rules. We also seek comment on whether we should consolidate the Low Income rules. In addition, we invite comments and proposals on what measures we can implement to balance the filing and advertising burdens on companies with low income end users with our need for information to run the program effectively.

50. *Forms.* Applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these consist of statements certifying that information provided on the forms themselves are accurate and complete, and that funds received will be used for their intended purpose. We invite comment on whether the certification language in existing forms that must be submitted by applicants for funds from the low income support mechanism are sufficient to ensure that funds are used in their intended manner, in the absence of waste, fraud, and abuse. Would additional forms or modified language in existing forms further protect the low income universal service support mechanisms against waste, fraud, and abuse? We request that commenters propose specific additional certification language they believe would further these goals, along with an explanation why the current certification language is insufficient. We also seek comment on the administrative burden (particularly on rural and small entities) of new forms and certifications.

(iv) Rural Health Care

51. In the Rural Health Care program, eligible health care providers apply for discounts on telecommunications services, in a procedure similar to that for the schools and libraries. The Rural Health Care support mechanism provided approximately $18 million thus far to carriers in fiscal year 2003. The program reimburses carriers that ''provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that services persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.'' This design ensures that health care providers in rural areas obtain the benefits of the Internet and telecommunications through universal service support. Rural health care providers often use rural health care support to implement telemedicine programs, *i.e.*, medical treatment supported by advanced telecommunications services and information services. Telemedicine programs allow rural health care providers to consult with specialists in an effective manner. Carriers are not required to be ETCs to participate in this program; all Internet service providers and common carriers may participate, including interexchange carriers. This program is capped at $400 million per year.

52. We seek comment on ways to improve and streamline the application process. Currently, health care providers must file the FCC Form 465, Description of Services Requested and Certification Form and the FCC Form 466, Funding Request and Certificate Form. We seek comment generally on these forms. Commenters should address whether more or less information should be required on these forms and whether any of the forms could be consolidated or eliminated, and whether any other forms would be helpful. We tentatively conclude that we should adopt a streamlined multi-year application for rural health care providers. Our experience suggests that few problems of waste, fraud, and abuse exist in the Rural Health Care program. Commenters should discuss whether adopting multi-year applications would raise significant waste, fraud, and abuse concerns in this program. We seek comment on whether the current application process deters participation, particularly by small health care providers. In addition, commenters should discuss the feasibility of using additional automation in the administrative process; for example, requiring the Administrator to e-mail commitment letters instead of using traditional methods such as the U.S. Postal Service to notify applicants of funding decisions.

53. *Forms.* Applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these consist of statements certifying that information provided on the forms themselves is accurate and complete, and that funds received will be used for their intended purpose. We invite comment on whether the certification language in existing forms that must be submitted by applicants for funds from the rural health care support mechanism are sufficient to ensure that funds are used in their intended manner, in the absence of waste, fraud, and abuse. Would additional forms or modified language in existing forms further protect the rural health care universal service support mechanisms against waste, fraud, and abuse? We request that commenters propose specific additional certification language they believe would further these goals, along with an explanation why the current certification language is insufficient. We also seek comment on the administrative burden (particularly on rural and small entities) of new forms and certifications.

b. USF Disbursements

54. We seek comment on whether we should adopt rules to better ensure that the disbursement process is administered in an efficient, effective, and competitively neutral manner. Commenters should discuss whether experience has shown that the Administrator disburses the correct amount of funds in a timely manner. We seek any suggestions for improving the disbursement process. Specifically, we seek comment on whether we should establish deadlines or performance targets to ensure that beneficiaries get the support for which they qualify in a timely manner. USAC's disbursement process varies slightly depending on the mechanism: for High Cost and Low Income, USAC disburses one amount to each carrier participating in the program each month; for the Schools and Libraries and Rural Health Care programs, USAC disburses amounts based on invoices received from the program participants. We seek comment on whether we should establish a single uniform system for disbursing USF, and whether such a single disbursement method is feasible, given the many differences among the USF programs.

We seek comment on whether we need to modify our rules to address program-specific disbursement issues, such as strengthened procedures to help effectuate the E-rate carry-over rule. For example, are there rules we should adopt to ensure full use of the $2.25 billion annual cap for the E-rate program? Commenters should discuss whether the current system results in efficient, effective, competitively neutral administration of the programs. We seek comment on whether experience shows that the amounts disbursed are accurate, and if not, suggestions for ways to improve such accuracy. We seek comment on whether we should adopt criteria or provide guidance for the Administrator's review of invoices for the E-rate and Rural Health Care programs. We understand that some beneficiaries have asserted that the Administrator sometimes denies payment on submitted invoices even though the original application had been approved. Would specific criteria or guidance help the invoice review process?

55. We seek comment on whether the existing disbursement process for the High Cost program should be revised. The High Cost support mechanism provided approximately $3.4 billion in support in fiscal year 2004. As currently structured, the High Cost program disburses approximately $300 to $325 million per month. USAC issues one payment, generally by electronic transfer, for each carrier for all universal service payments for which it is eligible. The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. USAC sends a remittance statement to the carriers on the last day of each month. Commenters should discuss whether the Administrator should provide additional notification to the carriers. We seek comment on whether we should adopt rules to provide for true-ups of amounts disbursed. Amounts paid to carriers under Local Switching Support and Interstate Common Line Support components of High Cost are based on forecasts and are subject to true-up. USAC compares the actual costs, submitted by carriers twelve months after the end of the year, to the projected costs. Currently, we have no rules limiting the level of a carrier's projections and carriers can overestimate or underestimate their accounts. We seek comment on whether we should require that data be submitted earlier in order to facilitate the true-ups. Commenters should also address whether, as part of the true-up process, carriers should pay interest on the difference between projected and actual amounts if the projected amounts exceed actual amounts.

56. USAC issues one monthly payment, generally by electronic transfer, for all Low Income universal service discounts provided two months earlier. The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. USAC bills companies that receive Low Income support (Lifeline, Link-Up, and Toll Limitation Service) and have a negative disbursement amount for any given month. So-called ''negative disbursement'' amounts can occur when USAC conducts a true-up between a company's projected support amount and the actual support claimed, or when a company revises its previous support claims, resulting in adjustments to a carrier's support payments. We seek comment on whether our Form 497 should be revised in order to reduce the likelihood of negative disbursement amounts, which are, in effect, an interest free loan to the carrier. We seek comment on whether carriers should be charged interest on the negative disbursement amount. USAC estimates Low Income payments on a quarterly basis, based on the percentage growth in total support claimed by all carriers over the previous quarters, and applies this factor to the amount of support the carrier received in the most recent quarter. The disbursements are based on a rolling average of the payments made to that carrier over the previous twelve months. The carrier data submission, filed fifteen days after the end of a quarter, is used to true-up payments. We seek comment on whether we should revise this disbursement procedure and if so, how.

57. We seek comment on whether we should simplify or streamline the four-level discount process for Lifeline and Link-Up, or if additional levels would be appropriate. Tier 1 is equal to the incumbent ETC's federal tariffed SLC. Tier 2 is an additional $1.75. Tier 3 is equal to one-half the amount of state-mandated Lifeline support or one-half of any Lifeline support provided by the carrier, up to $1.75 per month. Tier 4 is additional federal Lifeline support of up to $25 per month for eligible residents of tribal lands. There are additional discounts for low income residents on tribal lands; Enhanced Lifeline, Link-Up, and other universal service-related programs that are targeted specifically toward tribal lands.

58. We also seek comment on whether we should revise the current Rural Health Care disbursement process. The disbursement process for the Rural Health Care program is similar to the process for the E-rate program. We seek comment on whether we should adopt rules to better ensure that the disbursement process is administered in an efficient manner.

c. Contributions Process

59. We seek comment on whether to adopt any rules clarifying or improving the contributions process to ensure the Administrator collects sufficient funds. The Form 499–A sets forth the information that carriers must submit so that the Administrators of the USF and other funds can calculate and assess contributions. Beginning March 14, 2001, the Commission modified its reporting requirements to require carriers to file not only the annual Form 499–A, but also a quarterly worksheet, FCC Form 499–Q, with the interstate and international revenues from the previous period. Currently, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historical gross-billed revenue. USAC uses the revenue information provided on the Quarterly Worksheets to determine each carrier's universal service contribution on a quarterly basis, with a yearly true-up using the Annual Worksheet. USAC then bills carriers each month, based on their quarterly contribution amount. Carriers must pay their contribution by the date shown on the invoices. A carrier's failure to file the worksheets or submission of inaccurate or untruthful information ''may subject the contributor to the enforcement provisions of the Act and any other applicable law.'' We seek comment on whether we should modify or streamline the current contribution process. We seek comment on whether to adopt criteria for the Administrator to follow for making projections or forecasts, and if so, what criteria would be appropriate. Commenters should address the pros and cons of any proposals.

d. Periodic Review of Program Management

60. We seek comment on whether we should adopt rules requiring periodic review of the administration and management of the USF. Commenters should discuss whether a triennial review, such as we have for the Local Competition rules, would be useful or whether such reviews should occur at different time intervals.

B. Oversight of the USF

61. In this proceeding, we are not trying to find problems after they occur (and thus, seek to recover improperly disbursed funds in some cases years after disbursement), but we are trying to prevent problems from occurring in the first place. We recognize, however, that strong oversight procedures are needed because the application review process can never be perfect. In moving forward to strengthen audits and oversight over the program, we are informed by the lessons of prior review efforts and investigations. We are particularly focused on preventing a recurrence of past problems.

62. In paragraphs 69 to 99 of the NPRM, we consider whether to strengthen our oversight of the high cost, low income, schools and libraries, and rural health care universal service support mechanisms. In particular, we seek comment on adopting a targeted audit requirement to ensure program integrity and to detect and deter waste, fraud, and abuse. We generally seek comment on ways in which our oversight goals may be achieved through specific changes to various stages of the application and funding process. We invite parties to address whether and how our specific goals can be met by the changes discussed and to suggest other ways to further these goals. We note that many of these issues were addressed in the context of the schools and libraries universal service support mechanism. As a result, we specifically invite parties to comment on the ways our goals and methods for protecting the high cost, low income, and rural health care fund mechanisms from waste, fraud, and abuse should replicate or differ from those previously adopted with regard to the schools and libraries universal service support mechanism.

1. Independent Audits

63. Since the inception of the E-rate program, schools and libraries have been subject to audits to determine compliance with the program rules and requirements. The Commission's rules authorize the Administrator to conduct audits of all beneficiaries, as well as contributors to the USF. Audits are a tool for the Commission and USAC, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse. Because audits may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules applicable during a particular funding year, audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules.

64. Audits and investigations have uncovered issues ranging from poor program design (*e.g.*, problems with technology plans and problems with program rules) to improper use of funds, including intentional efforts to defraud the program by some unscrupulous actors. In each case in which fraud has occurred, the Commission has debarred or proposed debarment based on Department of Justice convictions. In these cases, the parties pled guilty or were convicted of a variety of offenses, such as imposing the entire cost of the goods and services on USAC, submitting materially false and fraudulent invoices to USAC, and trying to persuade school officials not to reveal evidence to Commission auditors. The Commission's OIG has identified instances of rule violations and has recommended recovery of universal service moneys. Likewise, USAC has, at our direction, maintained an audit program that has involved more than 201 audits of participants in the E-rate program and USAC audits of more than 100 participants in the other USF support mechanisms. In some cases, beneficiaries have self-identified compliance problems and proactively disclosed these to USAC or the Commission. For the E-rate program, approximately $1.14 billion in funds provided to beneficiaries have been subjected to an audit. To date, USAC has recovered a total of approximately $7.6 million for all violations of Commission rules. Recovery of $4.5 million is subject to pending appeals and recovery of $19.5 million is still under review. We have not yet determined whether program rules were or were not violated and whether recovery is warranted for these funds. These efforts have also led to recommended recovery of $6,243,223 for the High Cost support mechanism, $392,536 for the Low Income support mechanism, and $49,348 for the Rural Health Care support mechanism. The recommended recovery amounts are small in comparison to the more than $31 billion in funds disbursed since 1997, demonstrating that the great majority of E-rate, High Cost, Low Income, and Rural Health Care program recipients follow our rules and have not engaged in fraud. Nonetheless, even a situation that results in 0.67 percent of our funds being recovered as improperly disbursed represents a weakness in the operation of the programs, which needs to be corrected. We will be aggressive in correcting this problem. Conversely, we believe that USAC, OIG, and independent auditing processes may waste government money if they are unnecessarily repetitious, or inefficiently designed or executed.

65. *E-Rate Beneficiary Audits.* With this in mind, we seek comment on whether the Commission should institute a targeted independent audit requirement to further safeguard the E-rate program against potential misconduct, including waste, fraud, and abuse. Specifically, we seek comment on whether the Commission should require some recipients of E-rate funding to obtain an annual independent audit evaluating compliance with the statute and the Commission's rules. Many schools and libraries already obtain annual independent audits to comply with the Single Audit Act. Commenters should address whether, or under what conditions, the anticipated costs associated with targeted audits of program beneficiaries would outweigh the benefits of enhanced oversight of the universal service fund. For example, are post-disbursement audits even appropriate where the cost of the audit would approach or exceed the amount of universal service support disbursement?

66. We specifically seek comment on the costs and burdens that an independent audit requirement would have on smaller beneficiaries. For example, would an independent audit requirement deter the smaller schools and libraries from applying for discounts from the fund? Moreover, because the cost of such an audit could exceed the total discounts received by some applicants, any benefit of the E-rate program may be erased quickly by a burdensome audit requirement. We seek comment on whether the audit requirement should apply only to recipients that receive a relatively large amount of support or benefits from the program. What should the threshold be? For example, we could impose a requirement that any school or library that receives $3 million or more in discounts in any funding year, or a total of $3 million or more over a consecutive three-year period, must undergo an annual audit. We note that, based on data from Funding Year 2002, an annual $3 million threshold would ensure independent audit coverage of at least 25 percent of E-rate funds disbursed; combining an annual $3 million threshold with a $3 million triennial threshold would ensure independent audit coverage of more than 50 percent of E-rate funds disbursed. Should the same threshold apply to both schools and libraries, and service providers?

67. In addition, we seek comment how such audits should be funded. Should schools, libraries, and service providers that are subject to an annual independent audit pay the costs for an auditor to evaluate their compliance with Commission rules and the Act? Alternatively, we could require USAC to procure the services of an independent auditor to perform the audits in accordance with generally accepted government auditing standards (GAGAS). In such a scenario, the costs of the independent audits would be borne by the USF itself, and therefore recovered through the collections process. We note that many participants in the USF may have internal auditors on staff who could perform these audits. The Commission's rules require audits of USF beneficiaries to comply with GAGAS. These standards allow for entities to hire independent auditors to perform audit work, but they also allow (with certain safeguards) employees of the entity to perform independent audits. We seek comment on whether allowing internal auditors and other staff to perform reviews or audits would satisfy the need for strong oversight.

68. We seek comment on the scope and methodology of an annual independent audit. We note that our efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties, and application process must recognize the fundamental difference between intentional fraud and ministerial error. While minimizing ministerial error is important, such errors are far different from fraud. In fact, the complicated nature of our applications and the presence of USAC rules that are not published contribute to ministerial errors. Should the auditor evaluate compliance with Commission rules in order to determine potential noncompliance? Should USAC and the Commission recover improperly disbursed funds? Should our audits try to distinguish between intentional fraud, negligence, and unintentional ministerial errors? Parties recommending such an approach should offer a definition of ''ministerial error'' and provide examples. Commenters recommending this approach should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund Administrator. We seek comment on whether our audits should be limited to compliance with Commission rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. Commenters should discuss whether compliance with unpublished USAC administrative policies and practices should be included in the audit. In addition, we seek comment on whether government auditing standards, which require, *inter alia*, that independent auditors obtain a sufficient understanding of internal controls that the entity uses to ensure compliance with Commission rules that are material to the subject matter to plan the engagement, should be applied during the audit. Are auditors properly trained or have beneficiaries experienced auditors who do not properly understand the program rules? Have auditors wasted time or resources because the audit is improperly designed, improperly accomplished, or because auditors do not adequately understand the program rules? How much does it cost a school or library in terms of money and staff hours to comply with various types of audits? We seek comment on whether we should limit auditing so that one entity is not audited more than once for a given program year, so that one entity is not audited by USAC, and independent auditor, and/or the OIG for the same application. Should the auditor evaluate the sufficiency of the audited entity's internal controls that the entity uses to ensure compliance with Commission rules as part of its examination into the audited entity's compliance? We generally seek comment on other standards that should be imposed for carrying out such audits. For example, because the primary purpose of the audit is to evaluate compliance with the statute and program rules, should auditors be required to perform a ''compliance attestation'' in accordance with government auditing standards? Why or why not? We invite proposals on the mechanics of administering an independent audit program. Commenters should discuss ways to avoid repetitious or inefficient audits. In addition, we seek comment on whether USAC should provide audit reports to audited entities, and, if so, whether USAC should be required to provide the audit report within a particular period of time, after the audit is concluded.

69. We seek comment on whether the current structure of E-rate audits is appropriate to the program. Some schools indicate that E-rate audits are more intense and require them to expend more resources than do audits for the federal Title I educational program, which is a substantially larger program involving far more government money. How can we improve the process?

70. *Rural Health Care, Low Income, and High Cost Beneficiary Audits.* We seek comment on whether the current audit structure for the Rural Health Care, Low Income, and High Cost programs is appropriate to the programs. How can we improve the auditing process for these programs? As we note above in the E-rate context, our efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties, and application process must recognize the fundamental difference between intentional fraud and ministerial error. Should the auditor evaluate compliance with Commission rules in order to determine potential noncompliance? Should USAC and the Commission recover improperly disbursed funds? Should our audits try to distinguish between intentional fraud, negligence, and unintentional ministerial errors? Parties recommending such an approach should offer a definition of ''ministerial error'' and provide examples. Commenters recommending this approach should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund Administrator. We seek comment on whether our audits should be limited to compliance with Commission rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. Commenters should discuss whether compliance with unpublished USAC administrative policies and practices should be included in the audit. We seek comment on whether we should limit auditing so that one entity is not audited more than once for a given program year, so that one entity is not audited by USAC, an independent auditor, and/or the OIG for the same application. Should the auditor evaluate the sufficiency of the audited entity's internal controls that the entity uses to ensure compliance with Commission rules as part of its examination into the audited entity's compliance? We generally seek comment on other standards that should be imposed for carrying out such audits. For example, because the primary purpose of the audit is to evaluate compliance with the statute and program rules, should auditors be required to perform a ''compliance attestation'' in accordance with government auditing standards? Why or why not? We invite proposals

on the mechanics of administering an independent audit program. Commenters should discuss ways to avoid repetitious or inefficient audits. In addition, we seek comment on whether USAC should provide audit reports to audited entities, and, if so, whether USAC should be required to provide the audit report within a particular period of time, after the audit is concluded.

71. We seek comment on whether, in order to improve our oversight capacity to guard against waste, fraud, and abuse, and ensure funds are used for appropriate purposes, our rules should require independent audits of recipients of funds (*i.e.*, service providers) from the High Cost, Low Income, and Rural Health Care programs. We specifically seek comment on whether recipients of funds from any or all of these support mechanisms should be required to undergo an independent audit requirement, and, if so, whether only recipients above a particular threshold should be subject to this requirement. For example, we could require independent audits for any entity obtaining more than $3 million in USF support in a particular fiscal year. We note that for the High Cost program, approximately 15 percent of the study areas, *i.e.*, 292 study areas, received $3 million or more in High Cost support for fiscal year 2004. Establishing an audit requirement at this threshold would ensure coverage for about 69 percent of the High Cost fund for 2004. With respect to Rural Health Care, only two service providers have received $3 million or more in a given year since the inception of the program. We recognize that the cost of independent audits could outweigh the benefits in cases where USF recipients only receive a small amount of support. We seek comment on the costs and benefits of any independent audit program, particularly the potential paperwork and other costs imposed on rural carriers and small entities. We seek comment on the scope and methodology of these audits. Similar to the E-rate context, we seek comment on whether the auditor should evaluate compliance with Commission rules in order to determine potential noncompliance (and whether USAC and the Commission should recover improperly disbursed funds). Do the costs of an audit outweigh the benefits of enhanced oversight of the universal service fund? Should such audits be performed at the recipients' expense? If not, we seek comment on whether recipients should be required to reimburse USAC or the Commission for the cost of the audit, or to pay other penalties, in the event that waste, fraud, and abuse are discovered.

72. We seek comment on the estimated costs of audits of these other mechanisms. Should we impose identical audit requirements for each USF program? If not, what audit requirements, if any, should we impose on each program? For example, the Rural Health Care program has historically disbursed a fraction of the amount of the Schools and Libraries and High Cost mechanisms. Should we require rural health care providers to get audits only if the total disbursements to a particular provider reach a certain level? What should the audit threshold be for beneficiaries of each fund mechanism? Should there be different independent audit requirements or thresholds for fund recipients (*e.g.*, rural health care participants) and participating service providers? We seek comment on the impact of any rule on small entities. We also seek comment on alternatives that might provide assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

73. We seek comment on whether we should automatically sunset any independent audit requirement we may ultimately adopt. For example, we could sunset any measures automatically after a three-year period or we could review any independent audit requirement after a specific period of time.

74. *Contributor Audits.* In addition to considering whether we should require audits of USF program beneficiaries, we seek comment on whether our rules should require independent audits of contributors to the universal service fund. Pursuant to § 54.707 of the Commission's rules, USAC has the authority to audit contributors and carriers reporting data. In addition to such audits, our Enforcement Bureau regularly investigates contributor filings to ensure compliance with our rules. In addition to these existing procedures, we seek comment on whether we should establish an independent audit program for contributors modeled on the Single Audit Act or some other independent audit program (*e.g.*, independent audits used for the securities industry). Would the benefits of ensuring that contributors pay their full amount of USF support justify the costs of such a program? Should we establish a threshold for triggering a contributor audit (*e.g.*, require independent audits only for carriers contributing $100 million or more in a particular fiscal year)? A $100 million threshold for auditing contributors would ensure audit coverage for about 60 percent of the total contributions to the fund. If the Commission were to adopt an independent audit requirement for contributors to the Universal Service Fund, what additional rules or requirements (if any) should be adopted to ensure rigorous but fair audits? Finally, should we require contributors to pay for the audits on their own, or would using USF moneys be more appropriate?

75. We seek comment as to whether we should model any independent audit requirement we apply to participants in the USF on the requirements contained in the Single Audit Act and the OMB's implementing guidance. We seek comment on whether we should prohibit parties who fail to comply with any independent audit requirement from receiving any USF moneys until such audit is satisfactorily completed. We seek comment on whether we should adopt rules requiring audited entities to prepare and submit a plan for corrective action addressing all audit findings.

76. We seek comment on whether any independent audit requirement we adopt for beneficiaries or contributors should include an audit opinion concerning the sufficiency of an audited entity's internal controls over compliance and other areas of concern to us in our policy making role. We seek comment on whether we should adopt additional criteria beyond those established in government auditing standards for selecting an auditor, *e.g.*, competitive bids.

2. Document Retention Requirements for Recipients of Funds From the High Cost, Low Income, and Rural Health Care Mechanisms

77. In the *Schools and Libraries Fifth Report and Order*, we concluded that specific recordkeeping requirements not only prevent waste, fraud and abuse, but also protect applicants and service providers in the event of vendor disputes. In that order, we adopted a requirement that applicants and service providers retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year. We found that a five-year record retention requirement would facilitate improved information collection during the auditing process and will enhance the ability of auditors to determine whether applicants and service providers have complied with program rules.

78. We seek comment on whether we should adopt document retention rules

for all of the USF mechanisms that are consistent with the amended schools and libraries rule adopted in the *Schools and Libraries Fifth Report and Order*. We recognize that, because the high cost and low income programs do not precisely mirror the application and competitive bidding process in the schools and libraries program, different document retention requirements might be needed for each support mechanism. For the high cost and low income support mechanisms, we invite comment on the length of time that records relating to the receipt or delivery of services should be maintained by the beneficiary and/or service provider. We are not proposing document retention requirements for individual participants in the Low Income program. We solicit comment on the types of documents that would be sufficient to demonstrate compliance with the rules pertaining to the high cost and low income programs. For example, we seek comment on the types of records (such as billing and engineering) used to develop year end counts of total working loops and total working USF loops, as required for High Cost Loop support. We seek comment on a reasonable record retention period for such documents. We also seek comment on whether we should revise the document retention rules for the rural health care mechanism. Should we specify minimum document retention requirements?

79. In the *Schools and Libraries Fifth Report and Order*, we clarified that schools, libraries, and service providers remain subject to both random audits and to other audits and or investigations to examine an entity's compliance with the statute and the Commission's rules. These audits and investigations may be initiated at the discretion of the Commission, the Commission's OIG, USAC, or another authorized governmental oversight body. Similarly, § 54.619(c) of the Commission's rules subjects health care providers to random compliance audits. The *Schools and Libraries Fifth Report and Order* also concluded that failing to comply with an authorized audit or other investigation, such as failing to retain records or failing to make available required documentation, would constitute a rule violation that may warrant recovery of universal service moneys that were previously disbursed for the time period for which such information is being sought. We invite comment on whether recipients of funds from the High Cost, Low Income, and Rural Health Care universal service support mechanisms (*i.e.*, service providers and carriers) should be subject to comparable requirements.

3. Administrative Limitations Period for Audits or Other Investigations by the Commission or USAC of Recipients of Funds From the High Cost, Low Income, and Rural Health Care Support Mechanism

80. In this section, we seek comment on the establishment of an administrative limitations period in which the Commission or USAC will determine that a violation has occurred among recipients of funds from the high cost, low income, and rural health care universal service support mechanisms. We believe that establishing a general policy in this area is in the public interest because it would provide these USF support mechanism participants with some certainty of the time within which an audit or further review of funding may occur.

81. In the *Schools and Libraries Fifth Report and Order*, we indicated our preference for a limitation on the timeframe for audits or other investigations ''in order to provide beneficiaries with certainty and closure in the E-rate applications and funding processes.'' We established a policy that, for administrative efficiency, the time frame for such inquiry should match the record retention requirements, and accordingly, we announced that any inquiries to determine whether or not statutory or rule violations exist with be initiated and completed within a five-year period after final delivery of service for a specific funding year. We stated that conducting inquiries within five years struck an ''appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries' need for certainty and closure in their E-rate application processes.''

82. We seek comment on whether a similar five-year standard for initiating and concluding audits and investigations is appropriate for recipients of funds from the high cost, low income, and rural health care universal service support mechanisms. Similarly, we seek comment on whether a five-year period is appropriate for seeking adjustment of a contribution obligation to make the correct contribution amount to the USF. Many E-rate beneficiaries are public institutions. In these cases, the money needed to comply with audits and to maintain services when funds are unexpectedly delayed or denied comes from taxpayers and is part of a lengthy and complex budgeting process. If schools and libraries must account for the fact that an unintentional clerical error many years in the past may require them to disgorge E-rate funds, the system will work very inefficiently. For this reason, we believe that we must balance our duty to investigate fraud with E-rate beneficiaries' legitimate need for finality, which they have with other government programs. In the *Schools and Libraries Fifth Report and Order*, we found that the public interest ordinarily is not served by seeking to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery. We seek comment on this conclusion, and whether and in what circumstances pursuit of recovery of funds might be in the public interest even where the potential recovery amounts are small in relation to the audit or investigation costs. We also seek comment on whether to adopt a rule for the high cost, low income, and rural health care support mechanisms that requires recovery of the full amount disbursed in situations in which there is a pattern of rule or statutory violations, but the specific individual violations collectively do not require recovery of all disbursed amounts.

3. Recovery of Funds

83. We seek comment on whether to establish specific rules or criteria to address instances in which a USF beneficiary may not have used moneys in accordance with program rules. We seek comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Report and Order*, amounts disbursed from the High Cost, Low Income, and Rural Health Care support mechanisms in violation of the statute or Commission rule must be recovered in full. In addition, we seek comment on whether additional rules or criteria are necessary to ensure a fair, transparent fund recovery process for all USF mechanisms. Are there instances in which violations of Commission rules undermine statutory requirements or substantive policy goals of the USF programs, but may not rise to the level of waste, fraud, or abuse? Should funds be recovered for ministerial or clerical errors? In addition, we seek comment on whether and under what circumstances a beneficiary may retain an overpayment if, for some reason, USAC has either mistakenly disbursed an amount in excess of that which the entity is allowed under our rules, or has disbursed an erroneous amount as a result of violations of administrative procedures. Where disbursement of funds is warranted under the statute and rules, but an erroneous amount has been

disbursed, should the amount of funds that may be recovered be limited to the difference between what the beneficiary is legitimately allowed under the statute and our rules and the total amount of funds disbursed to the beneficiary or service provider? Finally, we seek comment on whether we should adopt a rule providing for an administrative hearing before the issuance of a letter seeking recovery of funds from the High Cost, Low Income and Rural Health Care support mechanisms.

4. Measures To Deter Waste, Fraud, and Abuse

84. The Schools and Libraries program is capped at $2.25 billion; however, requests for funds have historically far exceeded the annual cap. Thus, waste, fraud, or abuse of this program harms those schools and libraries who cannot receive their discount requests due to insufficient resources. In 2003, the Task Force on the Prevention of Waste, Fraud, and Abuse suggested a ceiling on the total amount of funding that an applicant can request. We seek comment on whether such a cap would be an effective measure of deterring waste, fraud, and abuse. If so, parties should explain how and describe the costs and benefits of any such approach. We seek comment on whether the concern raised by the USAC Task Force could be addressed through some measure other than an additional cap. We also seek comment on whether USAC should publicize ''best practices'' for E-rate program applicants. In addition, we seek comment on whether modifying the competitive bidding rules (*e.g.*, by requiring a minimum of three bids) would be an effective measure for deterring waste, fraud, and abuse. For example, where an applicant received only one bid, would additional review be warranted to ensure that the bid is not inflated, and if so, what level of review would be appropriate? We are concerned that obtaining three or more bids may be particularly difficult in rural areas. We are also concerned that obtaining three bids for small projects or for Priority One telecommunications services may be impractical in many cases, even for urban and suburban schools and libraries. If we require a minimum of three bids we may therefore exclude many rural schools and libraries, and many small projects and telecommunications services from the program. In order to avoid such an outcome, we ask commenters to address how a multiple bid requirement would be an effective deterrent against waste, fraud, and abuse and whether the costs of imposing additional rules in this regard would outweigh the benefits. We also seek comment on what rules should be adopted, if any, to ensure that USF moneys are used efficiently and are not wanted by, for example, applicants seeking to ''gold plate'' their supported services or seeking services or equipment beyond what they reasonably need or can use. Should we establish more detailed guidance about what is or is not supported under the E-rate program? Should we establish maximum prices for particular services or equipment?

85. Recently, the Commission adopted measures to protect against waste, fraud, and abuse in the administration of the E-rate program. In the *Schools and Libraries Fifth Report and Order*, the Commission stated that subsequent applications from beneficiaries that have violated the statute or rules in the past will be subject to greater review, such as enhanced obligations to provide additional documentary evidence demonstrating current compliance with all applicable requirements. We seek comment on whether we should adopt specific rules governing higher scrutiny for previous rule violators; for example, should we require specific reports or set performance goals for these beneficiaries? We seek comment on requirements, if any, that we should apply to the Administrator's conduct of heightened review of E-rate program participants. Commenters should discuss whether we should adopt criteria for service providers or require additional information from applicants. Commenters should discuss whether we should adopt rules or guidelines for when USAC should stop payments or processing applications as a result of suspected program violations. What threshold would be appropriate to trigger such an action? What would be the appropriate point for USAC to resume payments or processing applications?

86. *Measures to Prevent Waste, Fraud, and Abuse in the High Cost, Low Income, and Rural Health Care Programs.* We seek comment on whether we should adopt specific rules governing higher scrutiny for previous rule violators in these three programs. Should we require specific reports or set performance goals for these beneficiaries? We also seek comment on whether USAC should publicize ''best practices'' for these program participants. We specifically seek comment on ways to improve our oversight of the High Cost program. Commenters should discuss ways we can improve carriers' incentives for efficiency. Commenters should also address the state certification process and our oversight of costs not directly related to providing telecommunications services. Commenters should discuss whether we should require additional information from High Cost program participants in order to prevent waste, fraud, and abuse.

87. Additionally, we seek comment on ways we can deter waste, fraud, and abuse in the Low Income program. Commenters should discuss whether we should revise our rules to require carriers to provide additional documentation, showing the number of Lifeline subscribers for which they claim reimbursement. We also seek comment on whether we should revise our rules to require carriers seeking Low Income or High Cost support for serving tribal members residing on a reservation to provide additional information to demonstrate that each customer is a tribal member and resides on tribal lands.

88. Finally, we seek comment on ways to deter waste, fraud, and abuse in the Rural Health Care program. We also seek to ensure USF moneys are used efficiently and not in a wasteful manner in the Rural Health Care program by, for example, requesting goods or services that are not reasonably needed. Commenters should discuss whether we should establish a cap on Rural Health Care support. Commenters should address how we can verify whether the program beneficiary is providing rural health care that is eligible for reimbursement under program rules. Commenters are encouraged to propose specific language or rules (including possible enforcement mechanisms) that would further our goal of ensuring that funds received from the high cost, low income, schools and libraries, and rural health care programs are used in an appropriate manner.

5. Other Actions To Reduce Waste, Fraud, and Abuse

89. We seek comment on whether we should further protect the schools and libraries, high cost, low income, and rural health care universal service support mechanisms by adopting a rule specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner. It is important that these proposed rules have sufficient specificity for beneficiaries and contributors to understand their obligations. If we adopt a general rule, applicants may not have adequate notice of what behavior is prohibited by our rules. Would such a rule enhance the effectiveness of any future enforcement efforts relating to the discovery of waste, fraud, and abuse?

Commenters should discuss the necessity and appropriate scope of such of rule. Should it apply only to intentional acts of fraud, waste, and abuse, or should it incorporate instances when applicants or recipients recklessly or negligently use funds in an inappropriate manner? In addition, we seek comment on whether we should define waste, fraud, and abuse in our rules.

90. USAC has implemented controls for the Schools and Libraries support mechanism to ensure application validity and prevent inaccurate data entry. USAC also has data validation procedures for the High Cost, Low Income, and Rural Health Care programs. We seek comment on whether we should adopt specific rules to require USAC to implement application validity controls for all USF programs. Under our rules, USAC has the authority to conduct compliance audits of beneficiaries of the schools and libraries fund. USAC conducts audits of schools and libraries with its own staff and also retains independent auditors to conduct these audits. Under USAC's procedures, if the audit indicates a rule violation, USAC attempts to recover the funds from E-rate beneficiaries or service providers, as required in the *Schools and Libraries Fifth Report and Order*. We seek comment on ways that USAC can better facilitate this process and transfer the matter to the Commission for enforcement action in a timely manner. USAC also conducts audits of High Cost, Low Income, and Rural Health Care beneficiaries and contributors.

91. We seek comment on whether we should revise the debarment rule to make it more effective against individuals and other entities, such as corporations. The current debarment rules apply only to the E-rate program. The Commission's rules provide for automatic suspension and initiation of debarment proceedings against persons convicted of, or held civilly liable for, the commission or attempted commission of fraud and other similar offenses ''arising out of activities associated with or related to the schools and libraries support mechanism.'' To date, the Commission has debarred four parties for defrauding the schools and libraries program. We seek comment on ways to inform schools and libraries of the list of debarred parties. Commenters should discuss ways schools and libraries can reduce their vulnerability to predatory contractors. We also believe that the Commission should establish a more aggressive way to inform schools and libraries when contractors are debarred. Many schools and libraries find it very difficult to find the debarment list today. How should we improve the situation? Should we also inform schools and libraries when a contractor is under investigation? How do we allow schools and libraries to take steps to reduce their vulnerability to predatory contractors without violating the rights or prejudging parties under investigation? We seek comment on whether as part of our registration process we should require contractors to waive any right to confidentiality they may have during an investigation. Should the Commission or USAC draft a list of best and worst practices to assist beneficiaries in reducing fraud? We seek comment on whether we should adopt debarment rules applicable to the High Cost, Low Income, and Rural Health Care mechanisms. If so, should the debarment rules be modeled on the debarment rule applicable to the E-rate program, should we adopt mechanism-specific debarment rules, or should we model our debarment rules for any or all of the programs, including the E-rate program, on the government-wide non-procurement debarment regulations? We note that we have initiated a proceeding to consider, among other things, changes to our E-rate program debarment rules. We incorporate that record into this proceeding and ask parties to refresh the record to account for their experience since that time. In the *Second Report and Order*, 68 FR 36931, June 20, 2003, we asked whether we should adopt the proposed government-wide debarment rules then pending. Final government-wide rules were subsequently adopted in 2003. Commenters discussing the government-wide debarment rules should ensure their comments address these final rules. We also seek comment on whether we should broaden the scope of our debarment rules to encompass entities that have been found guilty of civil and criminal violations beyond those associated with our universal service programs or entities that have shown to have engaged in a clear pattern of abuse of our rules. We also seek comment on whether we should adopt sanctions other than debarment for violations in all USF programs. Commenters should discuss what type of sanctions would be appropriate, and identify any appropriate distinctions among the universal service programs. For example, should we reduce an E-rate beneficiary's discount level for a limited number of years for repeated violations?

92. We tentatively conclude that we should establish more aggressive sanctions and debarment procedures and disclosures in all USAC programs. There should be a range of sanctions available to us for violations in all USAC programs. What types of sanctions should we employ? We also believe that sanctions should be appropriate to the violation. Sanctions should reflect the fundamental difference between isolated incidents of unintentional ministerial error and committing criminal fraud. What sanctions should we apply to clerical mistakes versus intentional fraud? One specific idea we seek comment on is whether we should be able to reduce an E-rate beneficiary's discount level for a limited number of years as a sanction for repeated violations rather than imposing a fine, especially for public institutions. We seek comment on whether the Commission or USAC should create a list of best and worst practices to assist beneficiaries to reduce fraud. This list would give examples to schools and libraries that would help them identify a good contractor and a good application, and to avoid predatory contractors and risky application practices.

93. We continue to remain committed to rapidly detecting and addressing potential misconduct, and ensuring that universal service funds are used in the absence of waste, fraud, and abuse. We seek comment generally on other measures that would further these goals by deterring the inappropriate use of funds received from the various universal service support mechanisms. We invite commenters to propose mechanism-specific measures as well as measures that would apply to applicants or recipients of any of the various support mechanisms. Commenters should specify the manner in which their proposals would further protect the universal service support mechanisms from waste, fraud, and abuse.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

94. As required by the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix A. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA,

to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

95. This Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Ex Parte Presentations

96. These matters shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented in generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

D. Comment Filing Procedures

97. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 18, 2005, and reply comments on or before December 19, 2005. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. One (1) courtesy copy must be delivered to Warren Firschein at Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B442, Washington, DC 20554; e-mail: *warren.firschein@fcc.gov*; one (1) courtesy copy must be delivered to Mika Savir at Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B448, Washington, DC 20554; e-mail: *mika.savir@fcc.gov*; and one (1) copy to Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com*, by telephone at (202) 488–5300 or (800) 378–3160, or by facsimile at (202) 488–5563.

98. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

99. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must contain the docket or rulemaking number that appears in the caption of this proceeding.

100. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

101. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

102. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com*, by telephone at (202) 488–5300 or (800) 378–3160, or by facsimile at (202) 488–5563.

103. For further information regarding this proceeding, contact Warren Firschein, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–0844, or *warren.firschein@fcc.gov* or Mika Savir, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–0384, e-mail: *mika.savir@fcc.gov*.

104. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to (202) 395–5167.

Initial Regulatory Flexibility Analysis (Notice of Proposed Rulemaking)

105. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and *IRFA* (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

106. In the *NPRM*, we seek comment on ways to further protect the high cost,

low income, schools and libraries, and rural health care universal service support mechanisms from waste, fraud, and abuse. Specifically, we seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should require audits of recipients of funds from the high cost, low income, schools and libraries, and rural health care programs, and audits of contributors to the universal service fund. We also seek comment on whether to adopt document retention rules for all of the universal service fund mechanisms that are consistent with the rules pertaining to participants in the schools and libraries support mechanism. In addition, the *NPRM* seeks comment on whether to establish an administrative limitations period in which the Commission or USAC will determine that a violation has occurred among recipients of funds from the high cost, low income, and rural health care universal service support mechanisms that is consistent with the rules pertaining to participants in the schools and libraries support mechanism.

107. Additionally, we seek comment on ways to improve the management, administration, and oversight of the universal service fund, including the process for applying of universal service support, the disbursement process, the billing and collection process, issues relating to the Universal Service Administrative Company (USAC), and performance measures and goals for assessing and managing the universal service programs.

2. Legal Basis

108. The legal basis for the *NPRM* is contained in sections 1, 4, 201 through 205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 214, 254, 303(r), and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411.

3. Description and Estimate of the Number of Small Entities to Which Rules May Apply

109. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are approximately 1.6 small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

110. The Commission has determined that the group of small entities possibly directly affected by the proposed rules herein, if adopted, includes eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs) and vendors of internal connections. Further descriptions of these entities are provided below. In addition, the Universal Service Administrative Company is a small organization (non-profit) under the RFA. It does not constitute a substantial number of such entities, and we believe that circumstances triggering the new reporting requirement will be limited and that the requirement does not constitute a significant economic impact on that entity.

a. Schools and Libraries

111. As noted, ''small entity'' includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In Funding Year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 83,700 schools and 9,000 libraries might be affected annually by our action, under current operation of the program.

b. Telecommunications Service Providers

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

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

114. *Competitive Local Exchange Carriers* (CLECs), *Competitive Access Providers* (CAPs) and ''*Other Local Exchange Carriers*.'' Neither the

Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers.'' The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 35 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 37 ''Other Local Exchange Carriers,'' an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

115. *Interexchange Carriers* (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the Commission data, 281 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the rules and policies adopted herein.

116. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging and Cellular and Other Wireless Telecommunications.* Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

117. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, 62 FR 16004, April 3, 1997, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. Also, according to Commission data, 379 carriers reported that they were engaged in the provision of either paging or messaging services or other mobile services. Of those, the Commission estimates that 373 are small, under the SBA-approved small business size standard.

c. Internet Service Providers

118. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of internet service providers increased approximately five percent from 1997 to 2002.

d. Vendors of Internal Connections

119. The Commission has not developed a small business size standard specifically directed toward manufacturers of internal network connections. The closest applicable definitions of a small entity are the size standards under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment.'' According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business. The most recent available Census Bureau data indicates that there are 1,187 establishments with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment. Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that the majority of the 1,458 internal connections manufacturers are small.

e. Miscellaneous Entities

120. *Wireless Communications Equipment Manufacturers.* The equipment manufacturers described in this section are merely indirectly affected by our current action, and therefore are not formally a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our decisions. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35 percent, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the majority of wireless

communications equipment manufacturers are small businesses.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

121. The *NPRM* seeks comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should require audits of recipients of funds from the high cost, low income, schools and libraries, and rural health care programs, and audits of contributors to the universal service fund. We have no audit cost estimate at this time. In addition, the *NPRM* seeks comment on whether to adopt document retention rules for all of the universal service fund mechanisms that are consistent with the rules pertaining to participants in the schools and libraries support mechanism.

122. The *NPRM* also seeks comment on ways to improve the management, oversight, and administration of the universal service fund and the universal service mechanisms. The *NPRM* also seeks comment on improvements to the application and disbursement process, which may include changes in the universal service forms, adoption of a multi-year application, or changes in other reporting requirements.

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

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

124. In the *NPRM*, we seek comments asking for identification of any recordkeeping measures that would improve the Commission's ability to enforce its rules governing waste, fraud, and abuse in the high cost, low income, schools and libraries, and rural health care programs. Decreasing the likelihood of waste, fraud, and abuse preserves program funding for all eligible entities. The *NPRM* seeks comment on whether the audit requirement should apply only to recipients that receive a relatively large amount of support or benefit from the program. Similarly, with regard to potential audits of contributors to the fund, the *NPRM* seeks comment on whether we should establish a threshold for triggering an audit (*e.g.*, require independent audits only for carriers contributing $100 million or more in a particular fiscal year). In addition, the *NPRM* seeks comment on adopting a multi-year application form for Universal Service Fund beneficiaries, which could, if adopted, reduce the filing burden on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

125. None.

IV. Ordering Clauses

126. Pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* is adopted.

127. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14053 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 70, No. 138

Wednesday, July 20, 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

July 15, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: NAHMS Chronic Wasting Disease 2005 Study (CWD 2005).

OMB Control Number: 0579–NEW.

Summary of Collection: 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry, mandates collection and dissemination of animal health and information. APHIS plans to initiate a national study titled the Chronic Wasting Disease (CWD) 2005. CWD is a fatal, neurological disease that occurs in deer and elk populations. The study will collect information from cervid producers nationwide.

Need and Use of the Information: The purpose of the CWD study is to support the farmed/captive cervid industry by collecting baseline data to: (1) Describe general health and management practices; (2) describe the farmed/captive cervid industry; and (3) identify the most efficient and effective ways to contact producers for outreach purposes. Without this type of data, APHIS ability to detect trends in management, production, and health status that increase/decrease farm economy, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Individuals or households; Farms; Business or other for-profit.

Number of Respondents: 5,600.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 5,600.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–14295 Filed 7–19–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–051–2]

Syngenta Seeds, Inc.; Determination of Nonregulated Status for Cotton Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that cotton designated as transformation Event COT102, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Syngenta Seeds, Inc., in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination and our finding of no significant impact.

EFFECTIVE DATE: July 6, 2005.

ADDRESSES: You may read a copy of the determination, the environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Syngenta Seeds, Inc., and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Margaret Jones, Biotechnology Regulatory Services, APHIS, 4700 River

Road Unit 147, Riverdale, MD 20737; (301) 734–4880. To obtain copies of the determination, the environmental assessment (EA) and finding of no significant impact (FONSI), and the petition, contact Ms. Ingrid Berlanger at (301) 734–5715; e-mail: *ingrid.e.berlanger@aphis.usda.gov.* The petition and the EA, including the FONSI and determination, are also available on the Internet at: *http://www.aphis.usda.gov/brs/aphisdocs/03_15501p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/03_15501p_ea.pdf.*

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On June 4, 2003, APHIS received a petition (APHIS Petition Number 03–155–01p) from Syngenta Seeds, Inc. (Syngenta) of Research Triangle Park, NC, requesting a determination of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum* L.) designated as transformation event COT102, which has been genetically engineered for selective lepidopteran insect resistance. The Syngenta petition states that the subject cotton should not be regulated by APHIS because it does not present a plant pest risk.

On January 28, 2005, APHIS published a notice in the **Federal Register** (70 FR 4085–4086, Docket No. 04–051–1) announcing that the Syngenta petition and an environmental assessment (EA) were available for public review. That notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject cotton and food products developed from it.

We solicited comments concerning the petition and EA for 60 days ending March 29, 2005. We received nine comments by that date, submitted by seven individuals (one commenter submitted three copies of the same comment). The comments were from a university professor, three private individuals, and three anonymous commenters. Two of the commenters discussed field trials of genetically modified rice, and a third commenter discussed field trials of Syngenta cotton but did not address the petition for nonregulated status. None of the four remaining commenters supported granting nonregulated status to Syngenta's insect-resistant cotton event COT102. The issues raised in the comments are addressed in an attachment to the finding of no significant impact (FONSI).

Background

As described in the petition, Event COT102 cotton has been genetically engineered to contain an insecticidal *Vip3A(a)* gene derived from *Bacillus thuringiensis* (Bt) strain AB88 under the control of the actin-2 promoter derived from *Arabidopsis thaliana,* which confers expression of the VIP3A(a) protein throughout the plant with the exception of the fiber and nectar. Event COT102 cotton also contains the selectable marker gene *aph4* derived from *Escherichia coli.* The *aph4* gene encodes the enzyme hygromycinB phosphotransferase and its expression is controlled by the ubiquitin-3 promoter from *A. thaliana.* Agrobacterium-mediated gene transfer was used to transfer the added genes into the recipient Coker 312 cotton variety. The petitioner states that while the VIP3A protein shares no homology with known Cry proteins, testing has shown that VIP3A is similarly specific in toxicity only to the larvae of certain lepidopteran species. However, the VIP3A apparently targets a different receptor than the Cry1 proteins in sensitive species and therefore may be useful in the management of pest resistance.

Event COT102 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from the plant pathogen *Agrobacterium tumefaciens.* This cotton event has been field tested since 2000 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vector was disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Syngenta Seeds, Inc., a review of other scientific data, field tests of the subject cotton, and comments submitted by the public, APHIS has determined that COT102 cotton: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become weedy than the nontransgenic parental line or other cultivated cotton; (3) is unlikely to increase the weediness potential of any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; (5) will not harm threatened or endangered species or organisms that are beneficial to agriculture; and (6) should not reduce the ability to control pests and weeds in cotton or other crops. Therefore, APHIS has concluded that the subject cotton and any progeny derived from hybrid crosses with other non-transformed cotton varieties will be as safe to grow as cotton in traditional breeding programs that are not subject to regulation under 7 CFR part 340. The effect of this determination is that Syngenta's COT102 cotton is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340.

Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject cotton or its progeny. However, importation of COT102 cotton and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319 and imported seed regulations in 7 CFR part 361.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the proposed determination of nonregulated status for the subject cotton. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Syngenta's COT102 cotton and lines developed from it are

no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 14th day of July 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–14263 Filed 7–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 31–2005)

Foreign–Trade Zone 262 -- Southaven, Mississippi, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board), by the Northern Mississippi FTZ, Inc., grantee of Foreign–Trade Zone 262, requesting authority to expand its zone in Southaven, Mississippi, within the Memphis Customs port of entry (which covers areas in Tennessee and Mississippi). 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 July 12, 2005.

FTZ 262 was approved on October 1, 2004 (Board Order 1353, 69 FR 60841, 10/13/04). The general–purpose zone consists of a 219–acre site at the DeSoto Trade Center located between Interstate 55 and U.S. Highway 51 south of Church Road in Southaven.

The applicant is now requesting authority to expand the zone to include two additional parcels (461 acres) immediately south and southwest of the existing site at the DeSoto Trade Center (new total acreage -- 680 acres). The additional parcels are located at U.S. Highway 51 between College Road and Star Landing Road. The parcels are owned by College Road Land Company LLC and DTC Eastgate 1 LLC and are suitable for warehousing, light assembly, manufacturing and distribution activities. No specific manufacturing authority is being requested at this time. Such requests would be made 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 September 19, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to October 3, 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 Office of the City Clerk, 8700 Northwest Drive, Southaven, Mississippi 38671.

Dated: July 12, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–14286 Filed 7–19–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Preliminary Results of 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 conducting an administrative review of the antidumping duty order on Carbon and Certain Alloy Steel Wire Rod from Canada for the period October 1, 2003, to September 30, 2004 (the POR). We preliminarily determine that sales of subject merchandise by Ivaco Inc. and Ivaco Rolling Mills (IRM) (collectively, ''Ivaco'') and Ispat Sidbec, Inc. (Ispat) (now known as Mittal Canada Inc. (Mittal)[1]) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the publication of this notice.

EFFECTIVE DATE: July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Ashleigh Batton, at (202) 482–1376 or (202) 482–6309, 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 1, 2004, the Department issued a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 58889 (October 1, 2004). On October 29, 2004, in accordance with 19 CFR 351.213(b), Ivaco and Ispat requested an administrative review. On October 29, 2004, also in accordance with 19 CFR 351.213(b), the petitioners[2] requested an administrative review of Ivaco and Ispat. On November 19, 2004, the Department published the notice of initiation of this antidumping duty administrative review, covering the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701 (November 19, 2004).

On November 30, 2004, the Department issued its antidumping questionnaire to Ivaco and Ispat, specifying that the responses to Section A, and Sections B–E would be due on December 21, 2004, and January 6, 2005, respectively.[3] We received timely

[1] On June 24, 2005, we determined that Mittal was the successor-in-interest to Ispat Sidbec, Inc. *See Final Results of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Steel Alloy Wire rod from Canada*, (not yet scheduled for FR publication).

[2] The petitioners in this case are ISG Georgetown, Inc., Gerdau Ameristeel US, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable,

Continued

responses to Sections A–E of the initial antidumping questionnaire and associated supplemental questionnaires.

On June 20, 2005, and June 23, 2005, the petitioners and Ivaco respectively submitted comments for consideration in the preliminary results of this review. Due to the statutory deadline governing this review, we were unable to consider these comments for the preliminary results. They may, however, be considered for the final results of this review.

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 Harmonized Tariff Schedule of the United States (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).

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.[4]

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 subject to this order 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.[5]

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, export price (EP) or constructed export price (CEP), as defined in sections 772(a) and 772(b) of the Tariff Act of 1930, as amended (the Act), respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under Section 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject

of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

[4] *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079 (November 12, 2003).

[5] Effective January 1, 2005, CBP reclassified certain HTSUS numbers related to the subject merchandise. See http://hotdocs.usitc.gov/tariff_chapters_current/toc.html.

merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under Sections 772(c) and (d) of the Act.

We made the following company specific adjustments:

(A) Ivaco

Ivaco made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Ivaco to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by IRM to the U.S. customer from unaffiliated processors or distribution warehouses after importation into the United States.

For EP sales, we made additions to the starting price (gross unit price), where appropriate, for freight revenue (reimbursement for freight charges paid by Ivaco) and for billing errors (debit–note price adjustments made by Ivaco), and deductions, where appropriate, for billing adjustments (including credit–note price adjustments made by Ivaco), early payment discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, brokerage fees, U.S. customs duty, and U.S. merchandise processing fees.

For CEP sales, we made the same adjustments to the starting price as for the EP transactions described above. However, in its submitted U.S. sales database, Ivaco reported the total freight from IRM to the U.S. unaffiliated processor as a movement expense. Therefore, consistent with the Section E of the Department's Questionnaire, the portion of freight from the border to the U.S. unaffiliated processor and freight from one unaffiliated processor to another unaffiliated processor was allocated to further manufacturing. In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses), imputed inventory carrying costs, and further manufacturing. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See* Memorandum from David Neubacher and Daniel O'Brien, International Trade Compliance Analysts, to Constance Handley, Program Manager, Re: Analysis Memorandum for Ivaco, Inc., dated July 5, 2005 (Ivaco Analysis Memorandum).

(B) Ispat

Ispat had both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Ispat to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by Ispat to the U.S. customer from unaffiliated processors or distribution warehouses after importation into the United States. We note that Ispat reported certain further processed sales as EP transactions. For the preliminary results, we have treated these sales as CEP because the sale (i.e., date of sale/invoice) occurred after the importation into the United States.

For EP sales, we made additions to the starting price (gross unit price), where appropriate, for billing adjustments, and deductions, where appropriate, for billing adjustments, early payment discounts, rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, brokerage fees, U.S. customs duty, and U.S. merchandise processing fees.

For CEP sales, we made the same adjustments to the starting price as for the EP transactions described above. However, in its submitted U.S. sales database, Ivaco reported the total freight from Ispat to the U.S. unaffiliated processor as a movement expense. Therefore, consistent with Section E of the Department's Questionnaire, the portion of freight from the border to the U.S. unaffiliated processor was allocated to further manufacturing. In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses), imputed inventory carrying costs, and further manufacturing. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See* Memorandum from Daniel O'Brien and Ashleigh Batton, International Trade Compliance Analysts, to Constance Handley, Program Manager, Re: Analysis Memorandum for Ispat Sidbec Inc., dated July 5, 2005 (Ispat Analysis Memorandum).

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is not a particular market situation that prevents a proper comparison with sales to the United States. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Ivaco and Ispat had a viable home market for steel wire rod. As such, both companies submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Comparison Market Prices* section below.

B. Cost of Production Analysis

Because we disregarded below–cost sales in the most recently completed segment of the proceeding for each company, we have reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondents were made at prices below the cost of production (COP) during the POR.[6] Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we initiated a COP investigation of sales made by Ivaco and Ispat.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP, by model, based on the sum of materials, fabrication, and general and administrative (G&A) expenses. We relied on Ivaco's and Ispat's submitted COP data except for the following adjustments.

(A) Ivaco

1) In its Section B and C questionnaire responses, Ivaco included an additional matching criterion for coating. Ivaco did not request the new matching criterion in the previous or current review and has not provided supporting evidence

[6] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 55782 (August 30, 2002). *See also, Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 69 FR 68309 (November 24, 2004).

on its significance. Therefore, for the preliminary results, we adjusted Ivaco's submitted control number (CONNUM) for the coating field to reflect the coating characteristics as described in Sections B and C of the Department's questionnaire. See Ivaco Analysis Memo.

(B) Ispat

1) In its February 11, 2005, submission, Ispat expressed interest in obtaining a split cost–reporting period (October 2003 through December 2003 and January 2004 through September 2004) to account for the increase in the prices of certain raw materials (i.e., iron ore and various alloys used in the production of wire rod) during the POR. According to Ispat, the cost of certain inputs rose substantially during the POR.

Our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted–average cost for the entire POR except in unusual cases where this preferred method would not yield an appropriate comparison in the margin calculation. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order: Brass Sheet and Strip from the Netherlands*, 64 FR 48760 (September 8, 1999) citing *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*; 64 FR 30664, 30676 (June 8, 1999) (concluding that weighted–average costs for two periods were permissible where major declines in currency valuations distorted the margin calculations); *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8925 (February 23, 1998) (calculating quarterly weighted–average costs due to a significant and consistent price and cost decline in the market); *Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*; 58 FR 15467, 15476 (March 23, 1993) (determining that the Department may use quarterly weighted–average costs where there exists a consistent downward trend in both U.S. and home market prices during the period); *Final Determination of Sales at Less than Fair Value: Erasable Programable Read Only Memories from Japan*; 51 FR 39680, 39682 (October 30, 1986) (finding that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of quarterly weighted–average costs).

We have reviewed the information on the record. Ispat has not demonstrated that the raw material price increases were significant and/or consistent and would distort the margin calculation. Therefore, we followed our normal practice of calculating a single weighted–average cost for the POR.

2) We adjusted Ispat's G&A expenses to reflect a full calendar year, instead of the 12–month POR, as submitted. As a result, G&A expenses for these preliminary results are based on Ispat's 2003 financial data. We also adjusted Ispat's interest expense ratio, to reflect a full calendar year, using the submitted 2004 financial statements of Mittal. We used the information of the parent company, Mittal, because we did not have sufficient data from Ispat to recalculate its interest expense. We intend to request more information for a more accurate calculation for the final results.

3) We have identified certain sales to a specific customer which may be mis–categorized as home market sales. For these preliminary results, we have left the sales as home market sales, however, pending further investigation, we may re–categorize these sales for the final.

See Ispat Analysis Memorandum.

2. Test of Comparison Market Sales Prices

We compared the weighted–average COPs for the respondents to their home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregard below–cost sales where (1) 20 percent or more of a respondent's sales of a given product during the POR were made at prices below the COP and were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted–average COPs for the POR, we determined that the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that both Ivaco and Ispat made sales below cost and we disregarded such sales where appropriate.

C. Calculation of Normal Value Based on Comparison–Market Prices

We determined price–based NVs for the respondent companies as follows. For each respondent, we made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act.

The company–specific adjustments are described below.

(A) Ivaco

We determined NV for Ivaco as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments for differences in COS pursuant to section 773(a)(6)(C)(iii) of the Act.

We made COS adjustments for Ivaco's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses and warranty expenses) and adding U.S. direct selling expenses (credit expenses and warranty expenses). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

(B) Ispat

We determined NV for Ispat as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments for differences in COS pursuant to section 773(a)(6)(C)(iii) of the Act.

We made COS adjustments for Ispat's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses and warranty expenses) and adding U.S.

direct selling expenses (credit expenses and warranty expenses). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

D. Arm's–Length Sales

The respondents each reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). For both Ivaco and Ispat, sales to affiliated parties were determined not to be at arm's length. Therefore, we disregarded these sales in our comparison to U.S. sales.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison–market sales, NV may be based on constructed value (CV). Accordingly, for those models of steel wire rod for which we could not determine the NV based on comparison–market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses and warranty expenses). For EP sales we added U.S. direct selling expenses (credit expenses and warranty expenses) to the NV.

F. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction. The NV level of trade is that of the starting–price sale in the comparison market. For EP sales, the U.S. level of trade is also the level of the starting–price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the level of trade of the export transaction, we make a level–of-trade adjustment under section 773(a)(7)(A) of the Act.

We made the following company–specific adjustments:

(A) Ivaco

Ivaco reported two channels of distribution in the home market. The channels of distribution are: (1) direct sales by IRM and (2) direct sales by Sivaco Ontario. To determine whether separate levels of trade exist in the home market, we examined the stages in the marketing process and selling functions along the chains of distribution between Ivaco and its customers. Based on this examination, we preliminarily determine that Ivaco sold merchandise at two levels of trade in the home market during the POR. One level of trade is for sales made by Ivaco's steel wire rod manufacturing facility, IRM; the second level of trade is for sales made by Sivaco Ontario, Ivaco's customer service center, which is a steel wire rod processing and drawing facility. From our analysis of the marketing process for these sales, we determined that sales by Sivaco Ontario are at a more advanced stage than that for sales by IRM. Sales by Sivaco Ontario have different, more complex, distribution patterns, involving substantially greater selling activities.

The Department also analyzed Ivaco's selling functions in the home market, including inventory maintenance services, delivery services, handling services, freight services, sales administration services, bid assistance, technical services, and extension of credit. With regard to inventory maintenance, Sivaco Ontario offers more extensive inventory services than IRM. Sivaco Ontario maintains a significant general inventory, which results in a significantly longer inventory turnover rate for Sivaco Ontario. Thereby, Sivaco Ontario assumes the inventory services that would normally be performed by the customer. IRM does not provide these additional services. As stated by the Department in *Pipe and Tube from Turkey*, ''inventory maintenance is a principal selling function'' and ''the additional responsibilities of maintaining merchandise in inventory also give rise to related selling functions that are performed.''[7]

Due to its inventory services, Sivaco Ontario ships more often than IRM and also offers its customers just–in-time (JIT) delivery services, while IRM produces and ships rod based on a quarterly rolling schedule. In addition, Sivaco Ontario provides more handling and freight services than IRM in that it offers smaller, more frequent shipments with more varied freight services. For example, IRM sells rod in either full truck load or rail car quantities, while Sivaco Ontario will arrange shipment for less than truck–load quantities. IRM is able to produce significant quantities of wire rod on a rolling basis that are demanded by large volume companies, which is reflected in its delivery and freight services as well as the limited customer services provided. Sivaco Ontario, however, offers customers wire rod and wire products based on inventory already in stock, which enables the company to offer a short lead time in providing different quantities and a variety of processed wire rod products to its customers.

With regard to sales administration services, Sivaco Ontario has a smaller average shipment size than IRM, resulting in a higher proportional sales administrative service cost than IRM. In addition to its short–lead-time delivery capabilities, Sivaco Ontario also offers variable customer service options. These additional factors allow Sivaco Ontario to establish customer relations with companies that require smaller volumes

[7] *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 63 FR 35190, 35193 (June 29, 1998) (*Pipe and Tube from Turkey*).

of merchandise, inventory flexibility and have limited end use or processing schedules for the purchased product. Furthermore, Sivaco Ontario offers the following services to its customers, which IRM does not; (1) bid assistance to customers, (2) assistance with product specification and material processing review, and (3) a wider range of technical assistance, including helping customers solve usage problems and choose the best type of rod for their applications and machinery.[8]

The above differences between IRM and Sivaco Ontario in their marketing process and selling functions allow Ivaco to develop customer relationships on two distinct levels. Based on these differences, we concluded that two levels of trade exist in the home market, an IRM level of trade (level one) and a Sivaco Ontario level of trade (level two). Although IRM and Sivaco Ontario may have certain customers in common, the Department does not find the number of common customers to be significant or any reason to believe that these companies decided from which company to order based on the different services provided.

In the U.S. market, Ivaco reported two EP channels of distribution. The channels of distribution are: (1) direct sales by IRM to U.S. customers and (2) direct sales by Sivaco Ontario to U.S. customers. To determine whether separate levels of trade exist for EP sales to the U.S. market, we examined the selling functions, the chain of distribution, and the customer categories reported in the United States.

Specifically, we have found that direct sales by IRM to U.S. customers involve all the same selling functions as IRM's sales in the home market. Further, direct sales by Sivaco Ontario in the United States include all the same selling functions as those found for its home market sales. Finally, the customer categories submitted by Ivaco for IRM and Sivaco Ontario in the U.S. market match the similar customer categories reported for the home market.

Based on this, we preliminarily determine that sales by Ivaco's steel wire rod manufacturing facility, IRM, in the United States, are made at level of trade one, the same as IRM's home market sales. EP sales by Sivaco Ontario are made at the second level of trade.

To the extent possible, we have compared U.S. EP transactions and home market sales at the same level of trade without making a level–of-trade adjustment. When we were unable to find sales of the foreign like product in the home market at the same level of trade as the U.S. sale, we examined whether a level–of-trade adjustment was appropriate. When we compare U.S. sales to home market sales at a different level of trade, we make a level–of-trade adjustment if the difference in levels of trade affects price comparability. *See* section 773(a)(7)(A) of the Act. We determine any effect on price comparability by examining sales at different levels of trade in the country in which normal value is determined, in this case the home market. *See Id.* Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. Net prices are used because any difference will be due to differences in level of trade rather than other factors. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is no pattern of consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

For EP sales, we found that there were consistent price differences between models sold at different levels of trade. Therefore, we made a level–of-trade adjustment for EP sales for which we were not able to find sales of the foreign like product in the home market at the same level of trade as the U.S. sale.

In addition, Ivaco has two CEP channels of distribution: (1) sales of goods manufactured by IRM through an unaffiliated U.S. processor and/or warehoused in inventory locations in the United States and (2) sales of goods manufactured by IRM through locations in the United States. For CEP sales, we examined the relevant functions after deducting the costs of further manufacturing and U.S. selling expenses and associated profit. As a result, there are virtually no selling activities associated with Ivaco's CEP sales in either channel of distribution. Therefore, we preliminarily find a single level of trade with respect to Ivaco's CEP sales, and, moreover, that the CEP level of trade is not comparable to either level of trade in the home market. As the available data does not provide an appropriate basis for making a level of trade adjustment, we matched where possible, to the closest home market level of trade, level one, and granted a CEP offset pursuant to 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the home market not exceeding the amount of the deductions made from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

(B) Ispat

Ispat's EP sales to the United States and sales in Canada were made through two channels of distribution to two types of customers, re–drawers and parts manufacturers. For all these sales, the selling functions that Ispat performed for its different customers and channels of distribution were very similar for both types of customers in each market. In the home and U.S. markets, Ispat provides sales support, technical advice, after–sales services, warranty services, and freight and delivery arrangements. During the POR, Ispat provided warehousing services in the home market and customs brokerage arrangements for the U.S. market. As there is no distinction in selling functions or services to customers based on channel or type of customer, we find a single level of trade in the home market that is the same as the EP level of trade. Therefore, we have made no level–of-trade adjustment.

With regard to the U.S. sales of further manufactured products, which were all CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit covered in section 772(d) of the Act. Ispat does not perform any selling functions for these products. All selling functions for the U.S. market are performed by its U.S. affiliate, Ispat North America. As a result, there are virtually no selling activities associated with Ispat's CEP sales. Therefore, we preliminarily find that there is a single CEP level of trade, and that CEP level of trade is not comparable to the level of trade in the home market. As the available data does not provide an appropriate basis for making an LOT adjustment, we have made a CEP offset to Ispat's normal value in accordance with 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the home market not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

[8] *See* Submission from Ivaco to the Department, Re: Section A Response (January 11, 2005) at pages A-39 - A-40.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted–average margins exist for the period October 1, 2003, through September 30, 2004:

Producer	Weighted–Average Margin (Percentage)
Ivaco	2.96
Ispat/Mittal	6.27

In accordance with 19 CFR 351.224(b), the Department will disclose calculations performed within 5 days of publication of this notice. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total volume of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of steel wire rod from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for Ivaco and Ispat will be the rates established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.11 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3869 Filed 7–19–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron Metal Castings from India: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 16, 2005, in *Kiswok Industries Pvt. Ltd. and Calcutta Ferrous Ltd. v. United States*, Slip Op. 05–73, the Court of International Trade (CIT) affirmed the Department of Commerce (the Department) Final Results of Redetermination on Remand dated July 9, 2004. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise, where appropriate, until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate all relevant entries from Calcutta Ferrous Ltd.

EFFECTIVE DATE: July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2209, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Following publication of *Certain Iron–Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31515 (May 18, 2000) (*Final Results*), Calcutta Ferrous Ltd. and Kiswok Industries Pvt. Ltd. (collectively respondents) challenged the Department's *Final Results* before the CIT.

In the underlying administrative review, Calcutta Ferrous Ltd. argued that ''in calculating the benefits received by castings exporters from export loans, Commerce failed to take into account penalty interest paid at interest rates higher than the benchmark.'' *See* Comment 7 of the May 18, 2000, Issues and Decision Memorandum that accompanied the *Final Results*. In *Kiswok Industries Pvt. Ltd. and Calcutta Ferrous Ltd. v. United States*, Slip Op. 04–54 (CIT May 20, 2004) (Kiswok v. United States), the Court concurred with Calcutta Ferrous Ltd.'s position. In *Kiswok v. United States*, the Court also disagreed with the Department's position in the *Final Results* that overdue parts of a loan become a new loan with a new applicable interest rate.

In light of the Court's instructions in *Kiswok v. United States*, the Department, in its redetermination, recalculated the benefit Calcutta Ferrous Ltd. realized from its preferential loan(s), taking into account all of the interest paid thereon. *See Final Results of Redetermination on Remand*

Pursuant to Kiswok Industries Pvt. Ltd. v. United States, Slip Op. 04–54 (CIT May 20, 2004) (*Remand Determination*). No party submitted comments regarding the Department's *Remand Determination*.

On June 16, 2005, the CIT affirmed the Department's findings in the *Remand Determination*. *See Kiswok Industries Pvt. Ltd. and Calcutta Ferrous Ltd. v. United States*, Slip Op. 05–73 (CIT June 16, 2005).

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not ''in harmony'' with the Department's final determination or results. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's June 16, 2005, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will publish an amended final results and liquidate relevant entries covering the subject merchandise, in the event that the CIT's ruling is not appealed, or if it is appealed and upheld by the CAFC.

Dated: July 13, 2005.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3868 Filed 7–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071405D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a joint meeting of its Standing and Special Reef Fish Scientific and Statistical Committees (SSCs) in New Orleans, LA.

DATES: The meeting will be held Monday, August 1, 2005, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn & Suites, New Orleans Airport, 110 James Drive East, Saint Rose, LA 70087.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene a meeting of its Standing and Special Reef Fish Scientific and Statistical Committee, to review a Red Snapper Advisory Report prepared by the NMFS and approved by the Southeast Data, Assessment and Review (SEDAR) Assessment Workshop committee. The advisory report contains findings on the red snapper stock status and possible and appropriate management for the stock in accordance with the red snapper rebuilding plan. The SSC previously reviewed the red snapper stock assessment and the SEDAR Assessment Review Workshop's Consensus Report at a meeting held July 5–8, 2005, and found those reports to constitute the best available scientific information, in accordance with national standard two of the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA).

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency.

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by July 25, 2005.

Dated: July 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–3866 Filed 7–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071505A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Herring and Northeast (NE) Multispecies Fishery Management Plans (FMPs). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow up to four vessels at any given time to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from certain regulations that implement the emergency action to address haddock bycatch in the 2005 herring fishery for the period August 1 - October 30, 2005. The EFP would exempt vessels from requirements specified at 50 CFR 648.86(a)(3) that restrict Category 1 herring vessels from possessing more than 1,000 lb (0.45 mt) of haddock per trip. The vessels would be part of a study entitled, ''Modifications to Herring Midwater Trawls to Increase Escapement of Non-Target Species (Haddock),'' which is being coordinated by the Gulf of Maine

Research Institute on behalf of several research partners. The EFP application is being requested by one of the project partners, East Coast Pelagic Association (ECPA), and would allow trips to compare a standard Atlantic herring midwater trawl with a modified Atlantic herring midwater trawl intended to allow escapement of haddock. Nets would be towed by either two single vessels, or by two sets of midwater pair trawlers, resulting in a maximum of four vessels at any given time. The vessels will test gear modifications and use underwater video gear to research the vertical distribution and reaction behavior of herring and haddock during the seasonal and spatial overlap that occurs between these species on Georges Bank. Research is proposed for the period August 1 - October 30, and participating vessels would deploy a modified net and a standard net at intervals that provide standardized statistical results. The fishing activity would consist of 15–20 trips of 2.5 days each, with approximately 3–5 tows per day, of 3–4 hours each.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 4, 2005.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA5–176@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on ECPA EFP Proposal for Modifications to Herring Midwater Trawls to Increase Escapement of Non-Target Species.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on ECPA EFP Proposal for Modifications to Herring Midwater Trawls to Increase Escapement of Non-Target Species.'' Comments may also be sent via fax to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Eric Dolin, Fishery Policy Analyst, phone: (978) 281–9259, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION: A request for an EFP was submitted by ECPA on May 24, 2005. Consistent with the study objective, the applicants are requesting an EFP to authorize up to four vessels at any given time to possess haddock in excess of the 1,000–lb (0.45 mt) trip allowance. All herring landed from such trips would be counted toward the Total Allowable Catch (TAC) established by the Herring FMP for fishing Area 3. Haddock landed from such trips and accounted for under the requirements of the emergency action would be counted toward the haddock bycatch cap. The total estimated catch of herring during the experimental work is projected to be 3,500 - 5,000 mt. The amount of incidental catch of haddock is unknown, with information from the 2004 fishery demonstrating substantial variability in the extent of haddock caught incidentally while midwater trawling for herring.

The Manomet Center for Conservation Sciences would be responsible for collecting data at sea, and would utilize the same subsampling protocol as used by the NMFS Observer Program. Participating vessels would also be required to report all data in their Vessel Trip Reports, and processors required to report haddock culled from catches under the emergency regulations would continue to be required to report all culled haddock.

The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: July 15, 2005.

Alan D. Risenhoover

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

[FR Doc. E5–3867 Filed 7–19–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, August 26, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–14365 Filed 7–18–05; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, August 19, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–14366 Filed 7–18–05; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, August 12, 2005.

PLACE: 1155 21st St., NW., Washington, DC 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–14367 Filed 7–18–05; 11:42 am]

BILLING CODE 6451–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, August 5, 2005.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–14368 Filed 7–18–05; 11:42 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Notification Requirements for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The information collection requirements in a Commission coal and woodburning appliance rule have been approved by the Office of Management and Budget (OMB) under OMB control number 3041–0040. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission now requests comments on a proposed extension of approval of those information collection requirements for a period of three years from the date of approval by the OMB.

The rule, codified at 16 CFR part 1406, requires manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in part 1406. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than September 19, 2005.

ADDRESSES: Written comments should be captioned ''Notification Requirements for Coal and Wood Burning Stoves'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–7671.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there may be up to about 5 firms required to annually submit labeling and other information. The staff further estimates that the average number of hours per respondent is three per year, for a total of about 15 hours of annual burden ($5 \times 3 = 15$).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 14, 2005.

Rockelle S. Hammond,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 05–14200 Filed 7–19–05; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Information Collection Requirements for Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The information collection requirements in a Commission toy cap rule have been approved by the Office of Management and Budget (OMB) under OMB control number 3041–0080. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission now requests comments on a proposed extension of approval of those information collection requirements for a period of three years from the date of approval by the OMB.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) Notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels. The Commission wishes to obtain current and periodically updated information from all manufacturers concerning the status of programs to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 db.

The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than September 19, 2005.

ADDRESSES: Written comments should be captioned ''Information Collection Requirements for Sound Levels of Toy Caps'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and

Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–7671.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are ten firms required to annually submit the required information. The staff further estimates that the average number of hours per respondent is four per year, for a total of 40 hours of annual burden.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 14, 2005.

Rockelle S. Hammond,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 05–14201 Filed 7–19–05; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Date of a Previously Announced Open Meeting (New Orleans, LA); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Change to the Date of a Previously Announced Open Meeting (New Orleans, LA); Correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning an open meeting to receive comments from Federal, State and local government representatives and the general public on base realignment and closure actions in Florida, Louisiana and Mississippi that have been recommended by the Department of Defense (DoD). The date of this meeting has been changed to ensure that government officials and residents of the areas impacted by Hurricane Dennis would be able to participate fully.

The delay of this change notice resulted from a recent change to the meeting date due to weather. To avoid confusion, this notice of correction incorporates a previously announced change in location of the meeting. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at (703) 699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11237, on page 33128, in the second column, correct the **SUMMARY** and **ADDRESS** captions to read:

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on July 22, 2005 from 9 a.m. to 3:30 p.m. at the Mahalia Jackson Theatre of the Performing Arts, 801 North Rampart Street, New Orleans, Louisiana 70116. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates. The delegation will meet to receive comments from Federal, State and local government representatives and the general public on base realignment and closure actions in Florida, Louisiana and Mississippi that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

ADDRESSES: Mahalia Jackson Theatre of the Performing Arts, 801 North Rampart Street, New Orleans, LA 70116.

Dated: July 18, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer, Department of Defense.

[FR Doc. 05–14440 Filed 7–18–05; 3:22 pm]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Patented Acoustic Monitoring and Diagnostic Technologies for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to acoustic monitoring and diagnostic technologies as described in U.S. Patent No. 5,515,865, No. 5,684,460, and No. 5,853,005. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: The U.S. Army Research Laboratory (ARL) will be sponsoring an ARL Acoustic Monitor Technology Showcase Day to be held on August 17, 2005 at EAI Corporation,

Abingdon, MD. This event, designed to facilitate serious discussions concerning the use of the technology and licensing it for specific uses. The scheduled one-on-one discussions are meant to ensure that private communication between each interested party and ARL can occur. This will greatly assist in a potential licensee's review process in determining the applicability of the ARL acoustic monitor to each specific application and in fully understanding the licensing process. If you are planning to attend and/or require additional information please contact Dr. Kevin Smith at (724) 539–8310 or by e-mail address to *ksmith@tech-scouts.net*. Specific information relative to the technology can been seen at *http://stb.apg.army.mil/Library/briefings/TEDCO/ar121.pdf*.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–14211 Filed 7–19–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Potential Multipurpose Projects for Flood Damage Reduction and Recreation Development Within and Along the Highland Lakes, Colorado River, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Four Authorities authorize the study of the Colorado River and its Tributaries: (1) Flood Control Act, approval June 22, 1936: ''Section 6. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys for flood control at the following named localities * * * Colorado River, Texas, above the county line between Coke and Runnels counties * * * Lower Colorado River, Texas.'' (2) Resolution by the Committee on Commerce, United States Senate, adopted August 4, 1936; ''Resolved by the Committee of the United States Senate, that the Board of Engineers for Rivers and Harbors created under Section 3 of the River and Harbor Act, approved June 13, 1902, be and is hereby, requested to review the reports on Colorado River, Texas, submitted in House Document Number 361, Seventy-first Congress, second session, and previous reports, with a view to determining if improvement in the interest of commerce and flood control is advisable at the present time.'' (3) Rivers and Harbors Act, approved August 26, 1937: ''Section 4. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following named localities * * * Colorado River, and its tributaries, Texas, with a view to its improvement in the interest of navigation and flood control.'' (4) Rivers and Harbors Act, approved March 2, 1945: ''Section 6. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following named localities * * * Colorado River, Texas.'' An initial assessment based on the resolution guidance indicates a Federal interest in continuing with more detailed studies for these purposes. In accordance with the National Environmental Policy Act, an Environmental Impact Statement (EIS) will be prepared to evaluate and compare flood control damage reduction and recreation alternatives within and along the Colorado River and its tributaries concentrated along the Highland Lakes. The EIS will also assess the impacts to the quality of the human environment associated with each alternative. The study area for project implementation primarily includes the lower Colorado River and its adjoining tributaries below Lake O.H. Ivie to Tom Miller Dam or Lake Austin. The construction of residential and commercial structures within the Highland Lakes and along the Colorado River, have lead to extensive amounts of flood damages. Consequently, flood damage reduction measures will be developed to address the flood damages. In addition, recreation measures will be developed and evaluated as complements to proposed flood damage reduction measures. The non-Federal cost sharing sponsors for the feasibility study are the Lower Colorado River Authority and Travis County.

DATES: A public scoping meeting will be held during the fall of 2005. Notices will be sent to interested parties, posted on the project Web site at *http://www.fdep.org* and a notice will be published in local newspapers.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to the proposed action and EIS can be answered by: Mr. Tom Vogt, CESWF–PM–C, U.S. Army Corps of Engineers, Fort Worth District, PO Box 17300, Fort Worth, TX 76102–0300, (817) 886–1378.

SUPPLEMENTARY INFORMATION: The Highland Lakes are comprised of six lakes: Lake Buchanan, Inks Lake, Lake LBJ, Lake Marble Falls, Lake Travis, and Lake Austin. The Lower Colorado River Authority operates all of the Highland Lakes. Only Lake Travis is operated as a flood reservoir.

Alternatives for flood damage reduction and recreation will be developed and evaluated based on ongoing fieldwork and data collection and past studies conducted by the Corps of Engineers and the Lower Colorado River Authority. Alternatives for flood damage reduction measures will be evaluated from both a non-structural and structural aspect. Non-structural measures that will be evaluated include acquisition and removal of structures and flood proofing of structures for protection from potential future flood damage, and changes of gate operating procedures for Lake Travis. Structural measures that will be evaluated could include dry detention basins or multipurpose reservoirs and of various widths and depths and/or a combination of these measures along with non-structural alternatives. Recreation measures that will be evaluated for the enjoyment of residents and visitors alike include multipurpose trails and passive recreation features, such as interpretive guidance and media and picnic areas. Recreation measures will be developed to a scope and scale compatible with proposed flood damage reduction measures without significantly diminishing flood damage benefits.

The Draft Programmatic Environmental Impact Statement (PEIS) for Flood Damage Reduction and Ecosystem Restoration, Lower Colorado River Basin, Colorado River, Texas addressing the potential cumulative effects of reasonably foreseeable projects, including the Highland Lakes Interim Feasibility Study was completed in March 2005. The Final PEIS should be completed around October 2005. This EIS for the Highland Lakes will be tiered to the PEIS for the Lower Colorado River.

The public will be invited to participate in the scoping process, invited to attend public meetings, and given the opportunity to review the EIS. Release of the EIS for public comment is scheduled for summer 2006. The exact release date, once established, will be announced in the local news media.

Future coordination with other agencies and public scoping will be conducted to ensure full and open participation and aid in the development of the EIS. All affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties are hereby invited to participate. Future coordination will also be

conducted with the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). The USFWS and NMFS will furnish information on threatened and endangered species in accordance with the Endangered Species Act. In addition, the USFWS will also be requested to provide support with planning aid and to provide a Fish and Wildlife Coordination Act Report. Also the National Marine Fisheries Service (NFMS) will be consulted with regard to Essential Fish Habitat as required by the Magnuson-Stevens Fishery Conservation and Management Act. The State Historic Preservation Office will be consulted as required by Section 106 of the National Historic Preservation Act.

Dated: July 7, 2005.

John R. Minahan,

Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 05–14210 Filed 7–19–05; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129B.

DATES: Applications Available: July 20, 2005.

Deadline for Transmittal of Applications: September 6, 2005.

Deadline for Intergovernmental Review: November 2, 2005.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Estimated Available Funds: The Administration has requested $38,826,000 for the Rehabilitation Training program for FY 2006, of which we intend to use an estimated $450,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $125,000–$150,000.

Estimated Average Size of Awards: $137,500.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166). This priority is designed to increase the number of rehabilitation counseling programs that provide experiential activities for students, such as formal internships, practicum agreements, and other partnership activities with State vocational rehabilitation (VR) agencies. This priority supports a close relationship between the educational institution and the State VR agency by creating or increasing ongoing collaboration in order to increase the number of graduates who seek employment in State VR agencies.

Absolute Priority: For FY 2006, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *Partnership With the State VR Agency*.

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $38,826,000 for the Rehabilitation Training program for FY 2006, of which we intend to use an estimated $450,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $125,000–$150,000.

Estimated Average Size of Awards: $137,500.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: July 20, 2005.

Deadline for Transmittal of Applications: September 6, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: November 2, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training program—CFDA Number 84.129B must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Edward R. Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza, Washington, DC 20202–2800. Fax: (202) 245–7602.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.129B),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number 84.129B), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.129B),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any ''of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 386.20 and are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the geographical distribution of projects in each Rehabilitation Training program category in the country (34 CFR 385.33(a)) and the past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and attainment of established project objectives (34 CFR 385.33(b)).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The Rehabilitation Services Administration's (RSA) Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages.

The goal of this Rehabilitation Long-Term Training program is to increase the number of qualified VR counselors working in State VR agencies or related agencies. At least 75 percent of all grant funds must be used for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars, scholar-debt in years, program completion data for each scholar, dates each scholar's work begins and is completed to meet his or her payback agreement, current home address, and place of employment of individual scholars.

Each training grant recipient must provide this information to RSA annually using the RSA Grantee Reporting Form, (OMB# 1820–0617), an electronic reporting system. The RSA Grantee Reporting Form collects specific information regarding the number of RSA scholars entering the rehabilitation workforce, in what rehabilitation field, and in what type of employment (*e.g.* State agency, nonprofit service provider, or practice group). The information provided on the RSA Grantee Reporting Form will allow RSA to measure results against the goal of increasing the number of qualified VR counselors working in State VR agencies or related agencies.

VII. Agency Contact

For Further Information Contact: Edward Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7602.

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

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

VIII. Other Information

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

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

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

Dated: July 15, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–14287 Filed 7–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Reopening the Rehabilitation Short-Term Training—Client Assistance Program Fiscal Year (FY) 2005 Competition

Catalog of Federal Domestic Assistance (CFDA) Number: (84.246K).

SUMMARY: On May 6, 2005, we published in the **Federal Register** (70 FR 24012) a notice inviting applications for the Rehabilitation Short-Term Training—Client Assistance Program's FY 2005 competition. The Dear Colleague letter in the application package contained incorrect citations for the selection criteria to be used for this competition. The original notice for this FY 2005 competition established a June 20, 2005, deadline date for eligible applicants to apply for funding under this program.

In order to provide all applicants with a revised Dear Colleague letter and an opportunity to receive funding under this program, we are reopening the Rehabilitation Short-Term Training—Client Assistance Program FY 2005 competition. The new application deadline date for the competition is July 27, 2005.

DATES: Deadline for Transmittal of Applications: July 27, 2005 (applications must be received by the Electronic Grant Application System (e-Application) no later than 4:30 p.m., Washington, DC time).

Note: A copy of the revised Dear Colleague letter will be available in the application package. Applications for grants under the Rehabilitation Short-Term Training—Client Assistance Program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. You may not e-mail an electronic copy of a grant application to us. For information about how to submit your application electronically, please refer to section IV.6.

Other Submission Requirements in the May 6, 2005, notice (70 FR 24013). We have not extended the deadline for submitting a statement that an applicant qualifies for an exception to the electronic submission requirement.

Deadline for Intergovernmental Review: The deadline date for Intergovernmental Review under Executive Order 12372 is extended to September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 61 S. Forsyth Street, SW., Suite 18T91, Atlanta, GA 30303–8934. Telephone: (404) 562–6336.

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

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

SUPPLEMENTARY INFORMATION: Any eligible applicant may apply for funding under this program by the deadline date in this notice. Eligible applicants that submitted their applications in a timely manner for the Rehabilitation Short-Term Training—Client Assistance Program FY 2005 competition to the Department on or before 4:30 p.m. on the competition's original deadline date of June 20, 2005, are not required to resubmit their applications or reapply in order to be considered for FY 2005 awards under this program. We encourage eligible applicants to submit their applications as soon as possible to avoid any problems with filing electronic applications on the last day. The deadline for submission of applications will not be extended any further.

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

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

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

Dated: July 15, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–14288 Filed 7–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice set forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*; interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 27, 2005. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: August 4–6, 2005.

TIMES:

August 4:

Committee Meetings:

Assessment Development Committee: Closed Session—9 a.m. to 3:45 p.m.;

Reporting and Dissemination Committee: Open Session—2 p.m. to 3:45 p.m.;

Executive Committee: Open Session—4 p.m. to 5 p.m.; Closed session—5 p.m. to 6 p.m.

August 5:

Full Board: Open Session—8 a.m. to 12:30 p.m.; Closed Session 12:30 p.m.—2 p.m.; Open session—2 p.m. to 4:30 p.m.

Committee Meetings:

Assessment Development Committee: Open Session—10:30 a.m. to 12:30 p.m.;

Committee on Standards, Design, and Methodology: Open Session—10:30 a.m. to 12:30 p.m.;

Reporting and Dissemination Committee: Open Session—10:30 a.m. to 12:30 p.m.;

August 6:

Full Board: Open Session—8:30 a.m. to 12 p.m.;

LOCATION: St. Regis Hotel, 923 16th and K Streets NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on August 4 from 9 a.m. to 3:45 p.m. to review cognitive items for the 2006 National Assessment of Educational Progress (NAEP) assessments items in Civics, U.S. History, and Economics. This review is required by the No Child Left Behind Act of 2001 prior to submission to the Office of Management and Budget for clearance. This is the last review of the 2006 assessment instruments by NAGB. The meeting must be considered in closed session as disclosure of proposed test items from the NAEP assessments would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 4, the Reporting and Dissemination Committee will meet in open session from 2 p.m. to 3:45 p.m.

The Executive Committee will meet in open session on August 4 from 4 p.m. to 5 p.m. The Executive Committee will meet in closed session on August 4 from 5 p.m. to 6 p.m. to receive independent government cost estimates from the National Center for Education Statistics for proposed contracts for item development, sample selection, analysis, and reporting of NAEP testing for 2007–2012 and their implications on future NAEP activities. This part of the

meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to potential bidders attending the meeting. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 5, the full Board will meet in open session from 8:30 a.m. to 12:30 p.m. The Board will approve the agenda and the Chairman will introduce a new Board member, who will then be administered the Oath of Office by Secretary of Education, Margaret Spellings. The Board will then hear the Executive Director's report and receive an update on the work of the National Center for Education Statistics (NCES) from the Director of the Institute of Education Sciences.

From 10:30 a.m. to 12:30 p.m. on August 5, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design, and Methodology; and the Reporting and Dissemination Committee—will meet in open session.

The full Board will meet in closed session on August 5 from 12:30 p.m. to 2 p.m. The Board will preview the 2005 draft NAEP Reading and Mathematics results presented by the Associate Commissioner, National Center for Education Statistics. The data constitute a major basis for the national release of the Reading and Mathematics Report Cards in the fall of 2005 and cannot be released in an open meeting prior to the official release of the report. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP release activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 5, the full Board will meet in open session from 2 p.m. to 4:30 p.m. At 2:15 p.m. Board members will receive an update on the NAEP 2009 Science Framework project, followed by Board discussion of options to consider for 12th Grade State NAEP from 3:15 p.m. to 4:30 p.m. upon which the August 5 session of the Board meeting will conclude.

On August 6, the full Board will convene in open session from 8:30 a.m. to 12 p.m. At 8:30 a.m., the Board will receive results of two research studies on assessment by computer in Mathematics and Writing. Board actions on policies and Committee reports are scheduled to take place between 10:15 a.m. and 12 p.m., upon which the August 6, 2005 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. eastern standard time.

Dated: July 14, 2005.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 05–14199 Filed 7–19–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of renewal of the High Energy Physics Advisory Panel.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two year period, beginning in July 14, 2005.

The Panel will provide advice to the Associate Director, Office of High Energy Physics, Office of Science (DOE), and the Assistant Director, Mathematical & Physical Sciences Directorate (NSF), on long-range planning and priorities in the national high-energy physics program. The Secretary of Energy has determined that renewal of the Panel is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on July 14, 2005.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 05–14220 Filed 7–19–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 13, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2398–009.

Applicants: Liberty Electric Power, LLC.

Description: Liberty Electric Power, LLC submits a revised market-based rate tariff pursuant to the Commission's orders issued 5/5/05 in Docket No. ER01–687–003, *et al.* and 6/7/05 in Docket No. ER01–2398–008.

Filed Date: 07/07/2005.

Accession Number: 20050711–0073.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER03–1284–002.

Applicants: Blue Canyon Windpower LLC.

Description: Blue Canyon Windpower LLC submits notification of a change in status that reflects a departure from the characteristics the Commission relied upon in granting Blue Canyon authorization to sell wholesale power at market-base rates.

Filed Date: 07/07/2005.

Accession Number: 20050711–0146.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER03–775–004; ER00–136–003.

Applicants: FortisOntario, Inc.; FortisUS Energy Corporation.

Description: FortisOntario, Inc. & FortisUS Energy Corporation submit notice of a non-material change in status regarding the purchase by their parent, Fortis Inc., of Princeton Light and Power Company, Limited, a Canadian utility.

Filed Date: 07/07/2005.

Accession Number: 20050711–0067.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER04–657–005; ER04–660–005; ER04–659–005.

Applicants: Mystic I, LLC; Mystic Development, LLC; Fore River Development, LLC.

Description: Mystic I, LLC, Mystic Development, LLC and Fore River Development, LLC's, pursuant to the Commission's 6/8/05 order in Docket No. ER04–657–002, *et al.*, submit revised market-based rate tariffs to incorporate the change in status reporting requirement in Order No. 652.

Filed Date: 07/07/2005.

Accession Number: 20050713–0072.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER04–691–055; EL04–104–052.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits in compliance with the Commission's 6/7/05 order, 111 FERC ¶ 61,367 (2005), proposed revisions to Section 10 (Force Majeure, Indemnification, and Limitations of Liability and Damages) of Midwest ISO's Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1 to be effective 10/30/04.

Filed Date: 07/07/2005.

Accession Number: 20050711–0074.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–1055–001.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits Substitute Third Revised Sheet 209 to FERC Electric Tariff, 1st Revised Volume 4, amending its filing of 5/31/05 in Docket No. ER05–1055–000.

Filed Date: 07/06/2005.

Accession Number: 20050711–0062.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2005.

Docket Numbers: ER05–1190–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas & Electric Company submits an unexecuted amended and restated interconnection agreement with the City and County of San Francisco, California (CCSF) and an unexecuted service agreement with CCSF under PG&E's Wholesale Distribution Tariff.

Filed Date: 07/01/2005.

Accession Number: 20050712–0497.

Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2005.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc.'s executed service agreement for Network Integration Transmission Service & an executed Network Operating Agreement with Southwestern Public Service Company to serve West Texas Municipal Power Agency load located at the cities of Tulia, Brownsfield, and Floydada, Texas, designated as Service Agreement No.1138.

Filed Date: 07/07/2005.

Accession Number: 20050711–0058.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–1201–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No.1.

Filed Date: 07/07/2005.

Accession Number: 20050711–0059.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–1202–000.

Applicants: Blue Canyon Windpower II, LLC.

Description: Application of Blue Canyon Windpower II, LLC requesting blanket approval for market-based rates for wholesale sale of electric power pursuant to FERC Electric Tariff, Original Volume 1 from its planned 84-turbine wind farm and the granting of certain waivers and blanket approvals.

Filed Date: 07/07/2005.

Accession Number: 20050711–0060.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–1203–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement with the City of Geneva, and Commonwealth Edison Company.

Filed Date: 07/08/2005.

Accession Number: 20050712–0290.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2005.

Docket Numbers: ER05–1204–000.

Applicants: Mystic I, LLC; Mystic Development, LLC; Fore River Development, LLC.

Description: Mystic I, LLC, Mystic Development, LLC and Fore River Development, LLC submits revisions to their market-based rate tariffs.

Filed Date: 07/07/2005.

Accession Number: 20050712–0289.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–1205–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits revisions to Sheet Nos. 297–8, 297–33, 297–82 and 297–89 to PacifiCorp's Open Access Transmission Tariff, FERC Electric Tariff, 5th Revised Volume No. 11.

Filed Date: 07/08/2005.

Accession Number: 20050712–0288.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2005.

Docket Numbers: ER96–780–011; ER00–3240–004, ER01–1633–002.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Power Company (including two of Southern Power's Exempt Wholesale Generator subsidiaries) submits notification of a change in status with regard to the characteristics that the FERC previously relied upon in granting market-based rate authority.

Filed Date: 07/07/2005.

Accession Number: 20050711–0061.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER97–2364–008; ER97–4235–007, ER98–497–007, ER98–2371–005.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits an amendment to the refund report filed 6/3/03 in Docket No. ER97–4235–005, *et al.*

Filed Date: 07/08/2005.

Accession Number: 20050707–5068.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2005.

Docket Numbers: ER98–511–005; ER97–4345–016.

Applicants: Oklahoma Gas and Electric Company; OGE Energy Resources, Inc.

Description: Oklahoma Gas and Electric Company and OGE Energy Resources, Inc.'s revised versions of their respective market-based rate tariffs and additional information supporting OGE Companies' 2/7/05 updated market power analysis, in compliance with the Commission's 6/7/05 Order, 111 FERC ¶ 61,368 (2005).

Filed Date: 07/07/2005.

Accession Number: 20050707–4005.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3856 Filed 7–19–05; 8:45 a.m.]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0002; FRL–7940–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Final Authorization for Hazardous Waste Management, EPA ICR Number 0969.07, OMB Control Number 2050–0041

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0002, to (1) EPA online using EDOCKET (our preferred method), by email 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, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathleen Rafferty, Office of Solid Waste, mail code 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–0589; fax number: 703–308–8609; email address: *rafferty.kathy@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 30, 2005 (70 *FR* 16265), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2005–0002, 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 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 and OMB within 30 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.*

Title: Final Authorization for Hazardous Waste Management.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of the Resource Conservation and Recovery Act (RCRA). A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed

transfer, as required by, 40 CFR 271.23. Further, EPA may withdraw a State's authorized program under § 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under § 271.6, in accordance with section 271.21. These paperwork requirements are mandatory under section 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization.

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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 400 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: Entities potentially affected by this action are the Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 50.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 19,968 hours.

Estimated Total Annualized Capital and O&M Cost Burden: $0.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: July 12, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14280 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0092; FRL–7940–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Motor Vehicle Emission and Fuel Economy Compliance: Light Duty Vehicles, Light Duty Trucks, and Highway Motorcycles (Renewal); EPA ICR Number 0783.47, OMB Control Number 2060–0104

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0092, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Certification and Compliance Division, Vehicle Programs Group, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214–4851; fax number: (734) 214–4869; email address: *sohacki.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 13, 2004 (69 FR 50189), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2004–0092, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to 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 and OMB within 30 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, confidential business information (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*.

Title: Motor Vehicle Emission and Fuel Economy Compliance: Light Duty Vehicles, Light Duty Trucks, and Highway Motorcycles (Renewal).

Abstract: Under the Clean Air Act (42 U.S.C. 7521 *et seq.*) manufacturers and importers of light duty vehicles (passenger cars), light trucks, and motorcycles must have a certificate of conformity issued by EPA covering any vehicle they intend to offer for sale. In addition, light duty vehicles and light truck manufacturers and importers must also submit fuel economy information and reports required by the Energy Policy and Conservation Act (49 U.S.C. 32901 *et seq.*). EPA reviews vehicle information and test data to determine if the vehicle design conforms to applicable requirements and to verify that the required testing has been performed. After a certificate of conformity has been issued, subsequent audit and enforcement actions may be taken based on the initial information submitted as well as on information submitted while the vehicles are in service. Until a vehicle is available for purchase, information is confidential. Some proprietary information is permanently confidential.

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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4,656 hours per respondent. 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: Entities potentially affected by this action are passenger car, light truck, and motorcycle vehicle manufacturers and importers.

Estimated Number of Respondents: 139.

Frequency of Response: Annually and Quarterly.

Estimated Total Annual Hour Burden: 647,176.

Estimated Total Annual Cost: $47,459,648, which includes $3,060,000 annualized O&M costs, $8,275,000 annualized capital/startup costs, and $36,124,648 annual labor costs.

Changes in the Estimates: There is an increase of 105,058 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is an adjustment of the prior estimate primarily reflecting an increase in the number of light duty test groups along with a more detailed analysis of the labor burdens associated with a more comprehensive accounting of tests and reports.

Dated: July 12, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14281 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0053; FRL–7940–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pesticide Registration Application, Notification and Report for Pesticide Producing Establishments (Renewal), EPA ICR Number 0160.08, OMB Control Number 2070–0078

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0053, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, Office of Enforcement and Compliance Assurance (2225A) , Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–4146; fax number: 202–564–0085; e-mail address: *howie.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 26, 2005 (70 *FR* 3700), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0053, which is available for public viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to 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 and OMB within 30 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*.

Title: Pesticide Registration Application, Notification and Report for Pesticide Producing Establishments (Renewal).

Abstract: The U.S. Environmental Protection Agency (EPA) must collect information on pesticide-producing establishments in order to meet the statutory requirements of Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires producers of pesticide products, active ingredients, and devices to register their establishments with EPA and to submit an initial report, and thereafter, annually report on the types and amounts of products produced. The purpose of this notice is to request renewal of the collection process and reporting processes for the Application for Registration of Pesticide-Producing Establishments (EPA Form 3540–8), the Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540–8A), and the Pesticides Report for Pesticide-Producing Establishments (EPA Form 3540–16).

Application for Registration of Pesticide-Producing Establishments information, collected on EPA Form 3540–8, is a one-time requirement for all pesticide-producing establishments. The reporting of pesticide production information collected on the Pesticides Report for Pesticide-Producing Establishments, EPA Form 3540–16, is required within 30 days of receipt of the Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540–8A); and then annually thereafter, on or before March 1. The information is entered and stored in EPA's Office of Enforcement and Compliance Assurance (OECA)/Office of Compliance (OC) Section Seven Tracking System (SSTS), a computerized data processing and record-keeping system.

The Office of Compliance/OECA collects the establishment and pesticide production information for compliance oversight and risk assessment. The information is used by EPA Regional pesticide enforcement and compliance staffs, OECA, and the Office of Pesticide Programs (OPP) within the Office of Prevention, Pesticides and Toxic Substances (OPPTS), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), other Federal agencies, States under Cooperative Enforcement Agreements, and the public.

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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 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: 13,000.

Estimated Number of Respondents: 13,000.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 18,800.

Estimated Total Annual Cost: $1,240,961, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a increase of 841 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the estimates of the number of respondents.

Dated: July 12, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14282 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7941–2]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees, access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted five days from the date of publication of this document.

ADDRESSES: Comments should be submitted to: Susan Street, National Program Director, Senior Environmental Employment Program (MC 3661A), U.S. Environmental Protection Agency; Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. (Telephone (202) 564–0410).

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may ''make grants or enter into cooperative agreements'' for the purpose of ''providing technical assistance to: Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control.'' Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and

Recovery Act (RCRA), Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Emergency Planning And Community Rights to Know Act (EPCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to ''contractors'' under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
Q–831620 ...	*N*ational *A*ssociation for *H*ispanic *E*lderly (NAHE).
Q–831634 ...	*N*ational *C*aucus and *C*enter on *B*lack *A*ged, Inc. (NCBA).
Q–831633 ...	Do.
Q–831635 ...	Do.
Q–832229 ...	Do.
Q–832230 ...	Do.
Q–832231 ...	Do.
Q–832232 ...	Do.
Q–832233 ...	Do.
Q–832234 ...	Do.
Q–831636 ...	*N*ational *C*ouncil *O*n the *A*ging, Inc. (NCOA).
Q–832175 ...	Do.
Q–832353 ...	Do.
Q–831024 ...	*N*ational *O*lder *W*orker *C*areer *C*enter (NOWCC).
Q–831622 ...	*S*enior *S*ervice *A*merica, *I*nc. (SSAI).
Q–831623 ...	Do.

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.201(h)(2)(iii). This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: June 23, 2005.

Linda Wallace,

Director, Customer Services Support Center (3666A).

[FR Doc. 05–14278 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7941–3]

Gulf of Mexico Program Joint Policy Review Board and Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the joint Gulf of Mexico Program (GMP) Policy Review Board (PRB) and Management Committee (MC).

DATES: The meeting will be held on Tuesday, August 9, 2005, from 1 p.m. to 5 p.m. and Wednesday, August 10, 2005, from 8:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 315 Julia Street, New Orleans, LA 70130 (504) 525–1993.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda topics include: Gulf of Mexico Alliance: Background and Status; Harte Research Institute Gulf of Mexico Summit; Binational Initiatives; Regional Associations—IOOS; Hypoxia Task Force—Overview of Assessment and Regional Science Symposia; Business and Industry Initiatives; Gulf Coast Marine Fisheries Association—Consistent Mercury Advisories; Status of Regional Indicators Development; Coastal America Regional Meetings.

The meeting is open to the public.

Dated: July 14, 2005.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 05–14277 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0186; FRL–7725–9]

Azadioxabicyclooctane Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, and related documents, such as supporting science chapters, for the pesticide azadioxabicyclooctane, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address any risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for azadioxabicyclooctane through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice of availability is Phase 3 of the 4-Phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0186, must be received on or before September 19, 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: Tom Luminello, Antimicrobials Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–8075; fax number: 703–308–6466 ; e-mail address:*luminello.tom@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–2005–0186. 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 **SUPPLEMENTARY INFORMATION**. 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 **SUPPLEMENTARY INFORMATION**. 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–2005–0186. 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–2005–0186. 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 **SUPPLEMENTARY INFORMATION**. 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., N.W., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0186.

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–2005–0186. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1 **SUPPLEMENTARY INFORMATION**.

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. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment and related documents, such as supporting science chapters, for azadioxabicyclooctane, an antimicrobial pesticide, and encouraging the public to suggest risk management ideas or proposals. Azadioxabicyclooctane is a materials preservative used in industrial and manufacturing settings. Azadioxabicyclooctane is a mixture of three inseparable active ingredients that are used in water-based latex paints; metal working cutting fluids; aqueous dispersions/emulsions; adhesives; paper coatings and pulp slurry used in food packaging; floor waxes and polishes; caulking, grouting and spackling compounds; joint cements; drilling fluids; and flooding fluids (secondary oil recovery). The human health and ecological risk assessments identified potential risks of concern for azadioxabicyclooctane including dietary risks and risks to pesticide handlers. EPA developed the risk assessment for azadioxabicyclooctane through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment and related documents for azadioxabicyclooctane. Such comments and input could address, for example, the availability of any additional data to further refine the risk assessments, such as worker exposure data, residue data from indirect food contact, risk remedies or mitigation, or the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to azadioxabicyclooctane, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For azadioxabicyclooctane, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited use, small number of users and few affected stakeholders. However, if as a result of comments received during this comment period, EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for azadioxabicyclooctane. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Materials preservative, Pesticides and pests .

Dated: July 7, 2005.

Dennis H. Edwards, Jr.,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–14186 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0200; FRL–7726–1]

1,2-Benzisothiazolin-3-one (BIT) Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment and related documents, such as supporting science chapters, for the pesticide 1,2-Benzisothiazolin-3-one (BIT), and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address any risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for 1,2-Benzisothiazolin-3-one using a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice of availability is Phase 3 of the 4-Phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0200, must be received on or before September 19, 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: Rebecca Miller, Antimicrobials Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 305–0012; fax number: (703) 308–8481; e-mail address: *miller.rebecca@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–2005–0200. 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 **SUPPLEMENTARY INFORMATION**. 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

SUPPLEMENTARY INFORMATION. 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–2005–0200. 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–2005–0200. 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 **SUPPLEMENTARY INFORMATION**. 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–2005–0200.

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–2005–0200. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1 **SUPPLEMENTARY INFORMATION**.

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. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment, and related documents, such as supporting science chapters, for 1,2-Benzisothiazolin-3-one, an antimicrobial pesticide, and encouraging the public to suggest risk management ideas or proposals. 1,2-Benzisothiazolin-3-one is used as an active ingredient in industrial preservatives for the protection of water-based adhesives, caulks, sealants, grouts, spackling, ready-mixed cements, ready-mixed wallboard compounds, aqueous compositions such as emulsion paints, aqueous slurries, home cleaning and car care products, inks, photographic processing solutions, paints and stains, titanium dioxide slurries, oil in water emulsions, latices, metalworking fluids, casein/rosin dispersions, textile spin-finish solutions, pesticide formulations, tape joint compound, leather processing, and for preservation of fresh animal hides and skins. 1,2-Benzisothiazolin-3-one is also used as an inert ingredient in a variety of products as a materials preservative. The human health risk assessment identified potential risks of concern for 1,2-Benzisothiazolin-3-one including risks relating to the inert use in flea and tick control products for pets. EPA developed the risk assessment for 1,2-Benzisothiazolin-3-one through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by

the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment and related documents for 1,2-Benzisothiazolin-3-one. Such comments and input could address, for example, the availability of any additional data to further refine the risk assessments or the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to 1,2-Benzisothiazolin-3-one, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For 1,2-Benzisothiazolin-3-one, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment. However, if as a result of comments received during this comment period, EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for 1,2-Benzisothiazolin-3-one. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests, antimicrobial.

Dated: July 12, 2005.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–14187 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0181; FRL–7725–8]

Para-tertiary Amylphenol Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, and related documents, such as supporting science chapters, for the pesticide para-tertiary amylphenol (4-t-amylphenol), and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address any risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for 4-t-amylphenol through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice of availability is Phase 3 of the 4-Phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0181, must be received on or before September 19, 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: Killian Swift, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 308–6346; fax number: (703) 308–8481; e-mail address: *swift.killian@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–2005–0181. 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 of the **SUPPLEMENTARY INFORMATION**. 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 **SUPPLEMENTARY INFORMATION**. 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–2005–0181. 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–2005–0181. 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**SUPPLEMENTARY INFORMATION**. 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–2005–0181.

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–2005–0181. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1 **SUPPLEMENTARY INFORMATION**.

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. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, and related documents, such as supporting science chapters, for 4-t-amylphenol, an antimicrobial pesticide, and encouraging the public to suggest risk management ideas or proposals. 4-t-amylphenol, and salts (potassium and sodium) are active ingredients in disinfectant, hard non-porous surface sanitizer and air deodorizing (rather than air sanitizing) products used in agricultural premises, in food handling establishments, commercial, institutional, and industrial settings, residential and public access premises, and in medical settings. Examples of registered uses of 4-t-amylphenol and salts include application to hard surfaces (walls, floors, tables, fixtures), textiles (clothing, diapers, mattresses, and bedding), carpets, medical instruments, and agricultural equipment. Additionally, there are registered uses for fogging in occupational settings and in air deodorizing in both occupational and residential settings. The human health and ecological risk assessments identified potential risks of concern for 4-t-amylphenol including post-application risks related to treated clothing. EPA developed the risk assessment for 4-t-amylphenol through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input on the Agency's risk assessment and related documents for 4-t-amylphenol. Such comments and input could address, for example, the availability of any additional data to further refine the risk assessments, or the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to 4-t-amylphenol, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For 4-t-amylphenol, a modified, 4-phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its overall risk, use pattern and few affected stakeholders. However, if as a result of comments received during the comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. **SUPPLEMENTARY INFORMATION** and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for 4-t-amylphenol. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 34a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Antimicrobial, Disinfectants, Pesticides and pests, Sanitizers.

Dated: July 7, 2005.

Dennis H. Edwards, Jr.,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–14188 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0138; FRL–7714–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applicationsto register pesticide products containing new active ingredients not included in any previously registeredproducts pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0138, must be received on or before August 19, 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 Waller,Registration Division (7505C), Office of Pesticide Programs, Evironmental Protection Agency, 1200 Pennslyania Ave., NW., Washington, DC 20460; 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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0138. 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–2005–0138. 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 NumberOPP–2005–0138. 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–2005–0138.

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–2005–0138. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File symbol*: 264–IEL. *Applicant*: Bayer CropScience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Proline 480 SC Fungicide. *Active ingredient:* Prothioconazole at 41%. *Proposed classification*: None. *Uses*: For use on barley, oilseed crop group (except sunflower and safflower), dried shelled pea and bean (except soybean) crop subgroup, peanut, rice, and wheat.

2. *File symbol*: 264–IEU. *Applicant*: Bayer CropScience LP. *Product name*: Prothioconazole Technical Fungicide. *Active ingredient*: Prothioconazole at 97.7%. *Proposed classification*: None. *Uses*: Manufacturing use only.

3. *File symbol*: 66330–AN. *Applicant*: Arvesta Corp., 100 First Street, Suite 1700, San Francisco, CA 95105. *Product name*: Midas EC Gold. *Active ingredient*: Iodomethane at 33% and chloropicrin at 62%. *Proposed classification*: Restricted use pesticide. *Uses*: Pre-plant fumigations of fields intended for commercial production of various crops (strawberries, tomatoes, and peppers), ornamentals, bushes, trees, and vines for the control of soil-borne pests including weed seeds, nematodes, insects, and diseases.

4. *File symbol*: 66330–LI. *Applicant*: Arvesta Corp. *Product name*: Midas EC Bronze. *Active ingredient*: Iodomethane at 50% and chloropicrin at 45%. *Proposed classification*: Restricted use pesticide. *Uses*: Pre-plant fumigations of fields intended for commercial production of various crops (strawberries, tomatoes, and peppers), ornamentals, bushes, trees, and vines for the control of soil-borne pests including weed seeds, nematodes, insects, and diseases.

5. *File symbol:* 66330–LO. *Applicant*: Arvesta Corp. *Product name*: Midas 33:67. *Active ingredient*: Iodomethane at 33% and chloropicrin at 67%. *Proposed classification*: Restricted use pesticide. *Uses*: Pre-plant fumigations of fields intended for commercial production of various crops (strawberries, tomatoes, and peppers), ornamentals, bushes,

trees, and vines for the control of soil-borne pests including weed seeds, nematodes, insects, and diseases.

6. *File symbol*: 66330–LT. *Applicant*: Arvesta Corp. *Product name*: Midas 50:50. *Active ingredient*: Iodomethane at 50% and chloropicrin at 50%. *Proposed classification*: Restricted use pesticide. *Uses*: Pre-plant fumigations of fields intended for commercial production of various crops (strawberries, tomatoes, and peppers), ornamentals, bushes, trees, and vines for the control of soil-borne pests including weed seeds, nematodes, insects, and diseases.

7. *File symbol*: 81258–R. *Applicant*: American Pacific Corporation, 3770 Howard Hughes Parkway, Suite 300, Las Vegas, NV 89109. *Product name*: SEPTM-100. Fungicide. *Active ingredient*: Sodium azide at 20%. *Proposed classification*: None. *Uses*: For use in ornamental nurseries, sod farms, and turf renovation projects on golf courses.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 8, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of PesticidePrograms.

[FR Doc. 05–14283 Filed 7–19–05; 8:45am]

BILLING CODE6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0084;FRL–7724–6]

Dimethoate; Product Cancellation Order and Amendments to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for amendments to terminate certain uses of products containing the pesticide dimethoate, as well as cancellation of one dimethoate registration, as voluntarily requested by the registrants and accepted by the Agency, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a May 4, 2005 **Federal Register** Notice of Receipt of Requests from the dimethoate registrants to amend or voluntarily cancel their registrations to terminate certain uses of products containing dimethoate. In the May 4, 2005 Notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the Notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellation and amendments to terminate uses. Any distribution, sale, or use of the dimethoate products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; fax number: (703) 308–7042; e-mail address: *plummer.stephanie @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 identification (ID) number OPP–2005–0084. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

II. What Action is the Agency Taking?

This notice announces one cancellation and amendments to terminate certain uses, as requested by registrants, of dimethoate products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1.—DIMETHOATE PRODUCT CANCELLATIONS

EPA Registration No.	Product Name	Company
16–160	Dragon Cygon 2E Systemic Insecticide	Dragon Chemical Corporation

TABLE 2.—DIMETHOATE PRODUCT REGISTRATION AMENDMENTSTO TERMINATE USES

EPA Registration No.	Product Name	Company
400–278	De-fend E-267 Dimethoate Systemic Insecticide	Crompton Manufacturing Company, Inc.
829–251	SA-50 Brand Cygon 2E Dimethoate Systemic Insecticide	Southern Agricultural Insecticides, Inc.
1386–618	Dimethoate 267EC Systemic Insecticide	Universal Cooperatives, Inc.
1386–625	Dimethoate 400	Universal Cooperatives, Inc.
5481–102	Durham Duragon 2.67 Systemic Insecticide	Amvac Chemical Corp.
5481–133	Duragon 25% Wettable Powder Systemic Insecticide	Amvac Chemical Corp.
5905–493	Dimethoate 4 E.C.	Helena Chemical
5905–497	5 LB Dimethoate Systemic Insecticide	Helena Chemical
7401–97	Ferti-lome Systemic Evergreen Spray	Voluntary Purchasing Group Inc.
7401–106	Ferti-lome Spider Mite Spray	Voluntary Purchasing Group Inc.
7401–338	High-yield Cygon Systemic Insect Spray	Voluntary Purchasing Group Inc.
7969–30	Rebelate Dimethoate Systemic Insecticide	BASF Corporation
7969–38	Rebelate 2E Insecticide	BASF Corporation
9779–206	Dimate 2.67	Agriliance LLC
9779–273	Dimate 4E	Agriliance LLC
10163–55	Prokil Dimethoate W-25 Insecticide	Gowan Co.
10163–56	Prokil Dimethoate E267	Gowan Co.
10163–160	Gowan Dimethoate 4	Gowan Co.
19713–231	Drexel Dimethoate 4EC	Drexel Chemical Co.
19713–232	Drexel Dimethoate 2.67	Drexel Chemical Co.
34704–207	Dimethoate 400	Loveland Products, Inc.
34704–489	Dimethoate 2.67 EC	Loveland Products, Inc.
51036–110	Dimethoate 4E	Micro-Flo Company LLC
51036–169	Dimethoate 25 WP	Micro-Flo Company LLC
51036–192	Micro Flo Dimethoate 2.67 EC	Micro-Flo Company LLC
51036–198	Cymate 267	Micro-Flo Company LLC
67760–36	Chemathoate 267 E.C. Systemic Insecticide	Cheminova Inc.
67760–44	Dimethoate 4W	Cheminova Inc.

Note that registration #34704–540 was listed in the May 4, 2005 notice, but has been left out of this notice because it was previously cancelled through maintenance fees.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number.

TABLE 3.—REGISTRANTS OF CANCELLED AND/OR AMENDED DIMETHOATE PRODUCTS

EPA Company No.	Company Name and Address
16	Dragon Chemical Corporation 71 Carolyn Blvd. Farmingdale, NY 11735
400	Crompton Manufacturing Company, Inc. 74 Amity Road Bethany, CT 06524
829	Southern Agricultural Pesticides Inc. PO Box 218 Palmetto, FL 34220
1386	Universal Cooperatives 1300 Corporate Center Curve Eagan, MN 55121
5481	Amvac Chemical Corporation 4695 MacArthur Court, Suite 1250 Newport Beach, CA 92660
5905	Helena Chemical 225 Schilling Blvd., Suite 300 Collierville, TN 38017
7401	Brazos Associates, Inc. (Agent for Voluntary Purchasing Group) 1806 Auburn Drive Carrollton, TX 75007
7969	BASF Agricultural Products Center Regulatory Affairs Department 26 Davis Dr., PO Box 13528 Research Triangle Park, NC 27709

TABLE 3.—REGISTRANTS OF CANCELLED AND/OR AMENDED DIMETHOATE PRODUCTS—Continued

EPA Company No.	Company Name and Address
9779	D. O'Shaughnessy Consulting Inc. (Agent for Agriliance LLC) 21 Birch Parkway Sparta, NJ 07871
10163	Gowan Co. PO Box 5569 Yuma, AZ 85366
19713	Drexel Chemical Co. 1700 Channel Ave., PO Box 13327 Memphis, TN 38113
34704	Loveland Products, Inc. PO Box 1286 Greeley, CO 80632
51036	Micro-Flo Company LLC 530 Oak Court Dr. Memphis, TN 38117
67760	Cheminova Inc., Washington Office 1620 Eye Street, N.W., Suite 615 Washington, DC 20006

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the May 4, 2005 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellation and/or amendments to terminate certain uses of dimethoate.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation and amendments to terminate certain uses of dimethoate registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency orders that the dimethoate product registration identified in Table 1 of Unit II.is hereby canceled and the product registrations identified in Table 2 of Unit II are hereby amended to terminate use on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II.in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit VI. will be considered a violation of FIFRA.

V. 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 or amended to terminate one or more uses. 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, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are defined in EPA's existing stocks policy (56 FR 29362, June 26, 1991) as those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action or amendment of their registrations. Any distribution, sale, or use of existing stocks, except as provided in the amendment or cancellation order, would be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

The cancellation order issued in this Notice includes the following existing stocks provisions.

1. Distribution or sale of products by the registrant labeled for use on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil:

The registrant of any product listed in Table 1 or 2 may distribute or sell existing stocks of the product bearing labels for use on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, or trefoil for one year after the effective date of this cancellation/amendment order. The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 will not be lawful under FIFRA one year after the effective date of the cancellation or amendment order, except for the purposes of shipping such stocks for export, consistent with section 17 of FIFRA, or for proper disposal.

2. Distribution, sale, or use of products by persons other than the registrant labeled for use on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil.

Any person other than the registrant may distribute, sell, and use existing stocks of any product listed in Table 1 or 2 that is labeled for use on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil after the effective date of this cancellation/amendment order until such existing stocks are exhausted.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 8, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–14070 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0173; FRL–7724–1]

Notice of Receipt of a Request for an Amendment to Delete a Use in a Certain Pesticide Registration

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 an irrevocable request for an amendment by a registrant to delete a use in a certain pesticide registration. 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 amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: EPA intends to approve the request for deletion of use on cats from EPA Registration Number 2596-151. This request for amendment to delete a use is irrevocable. Therefore, the Agency will not consider a request for withdrawal.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address: *sibold.ann@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–2005–0173. 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 an irrevocable application from a registrant to delete a use in one pesticide registration. This registration is listed in Table 1, of this unit including registration number, product name, active ingredient, and specific use deleted:

TABLE 1.—REGISTRATION WITH REQUEST FOR AN AMENDMENT TO DELETE A USE IN A CERTAIN PESTICIDE REGISTRATION

EPA registration no.	Product name	Active ingredient	Delete from label
2596-151	Ref 119	Phenothrin	Use on cats and kittens

Table 2, of this unit includes the name and address of record for the registrant of the product listed in Table 1, of this unit.

TABLE 2.—REGISTRANT REQUESTING AN AMENDMENT TO DELETE A USE IN A CERTAIN PESTICIDE REGISTRATION

EPA company no.	Company name and address
The Hartz Mountain Corporation	400 Plaza Drive, Secaucus, NJ 07094-3688

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 amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30–day period in which the public may

comment. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

The request for deletion of use on cats and kittens is irrevocable. Therefore, the Agency will not consider requests for withdrawal.

V. Provisions for Disposition of Existing Stocks

The effective date of the amendment will be stated in the notice of amended registration and will be no earlier than October 31, 2005. The Agency has authorized the registrant to sell or distribute product under the previously approved labeling as follows: Products in the United States which have been packaged, labeled, and released for shipment prior to the effective date of the amendment may be sold or distributed by Hartz from its facilities until December 31, 2005, and may be sold, or distributed, by persons other than the registrant until March 31, 2006. After this date, products may not be distributed unless for the purposes of proper disposal or export. The Agency has provided restrictions on existing stocks because the Agency has identified potential risk concerns associated with this registration.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 1, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–14066 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0053; FRL–7702–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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

DATES: Comments, identified by docket identification (ID) number OPP–2005–0053, must be received on or before August 19, 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: Tony Kish, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; e-mail address: *kish.tony@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–2005–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

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

a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the 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–2005–0053. 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–2005–0053. 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–2005–0053.

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–2005–0053. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

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

II. What Action is the Agency Taking?

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

List of Subjects

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

Dated: July 8, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroSciences LLC, 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.

Dow AgroSciences LLC

PP 0E6208, PP 9F6024, PP 9E5041, PP1E6252, PP 2F4135, PP 7F4887, PP 1F3989, PP 3F4914, PP 2F4127, PP 4F6879, PP 1F3989, PP 1F3995, and PP 2F 4154

EPA has received the following pesticide petitions PP 0E6208, PP 9F6024, PP 9E5041, PP 1E6252, PP 2F4135, PP 7F4887, PP 1F3989, PP 3F4914, PP 2F4127, PP 4F6879, PP 1F3989, PP1F3995, and PP 2F 4154 from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of [fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)- 1-propanenitrile) and its metabolites cis- and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone] in or on the raw agricultural commodity grape at 1.0 parts per million (ppm), blueberry at 0.3 ppm, cranberry at 1.0 ppm, fruit, citrus, group 10 at 1.0 ppm, fruit, stone, group 12 (except plum, prune) at 2.0 ppm, pecan at 0.1, banana at 0.3 ppm and [fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) and its metabolite (alpha-(2-(4-chloro-3-(D-glucopyranosyloxy) -phenyl) ethyl)-alpha-phenyl-1H- 1,2,4-triazole-1-propanenitrile), in or on the raw agricultural commodity peanut at 0.1 ppm, and peanut, hay at 20 ppm.

Previously, EPA had received pesticide petitions PP 2F4135, PP 7F4887, PP 1F3989, PP 3F4914, and PP 2F4127 from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of [fenbuconazole (alpha-(2-(4- chlorophenyl) -ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)- 1-propanenitrile) and its metabolites cis- and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone] in or on the raw agricultural commodities apple at 0.4 ppm, apple, wet pomace at 1.0 ppm, sugar beet, roots at 0.2 ppm, sugar beet, tops at 9.0 ppm, sugar beet, dried pulp at 1.0 ppm, sugar beet, molasses at 0.4 ppm, plum at 2.0 ppm, plum, prune, dried at 7.0 ppm, almond at 0.05 ppm, almond, hulls at 3.0 ppm, and wheat, grain at 0.05 ppm, wheat, straw at 10.0 ppm and [fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)- 1-propanenitrile) and its metabolites cis-and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1- ylmethyl)-2-3H-furanone and 4-chloro-alpha(hydroxymethyl)-alpha-phenyl-benzenebutanenitrile] in or on fat of cattle, hogs, horses, goats, and sheep at 0.05 ppm and liver of cattle, hogs, horses, goats, and sheep at 0.3 ppm.

These pending petitions were transferred to Dow AgroSciences on September 21, 2001 and Dow AgroSciences is still interested in pursuing these previously submitted tolerance petitions. Previously these petitions were published in the **Federal Register** for public comment on December 20, 1992, October 21, 1993, February 9, 1994, March 2, 1994, July 13, 1994, August 18, 1994, January 30, 1998, and June 25, 1999.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fenbuconazole in plants is adequately understood for the purpose of these tolerances. Plant metabolism was evaluated in three diverse crops, wheat, peaches, and peanuts. The route of metabolism is similar in all crop groups and proceeds with three main pathways. Oxidation at the benzylic carbon (pathway 1) led to the ketone and the lactone as metabolites. Oxidation or nucleophilic substitution on the carbon next to the triazole ring (pathway 2) led to triazole alanine (TA) and triazole acetic acid (TAA) presumably through free triazole. Metabolic pathway 3 produced the phenolic metabolite RH–4911, and led to the glucose conjugates found in all crops.

2. *Analytical method.* An adequate enforcement method is available for the established and proposed tolerances. Quantitation of fenbuconazole residues (and metabolites cis- and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone) at an analytical sensitivity of 0.01 milligrams/kilogram (mg/kg) is accomplished by soxhlet extraction of samples in methanol, partitioning into methylene chloride, redissolving in toluene, cleanup on silica gel, and gas liquid chromatography using nitrogen specific thermionic detection. Quantitation of fenbuconazole residues (and metabolite alpha-(2-(4-chloro-3-(D-glucopyranosyloxy)-phenyl) ethyl)-alpha-phenyl-1H-1,2,4-triazole-1-propanenitrile) at an analytical sensitivity of 0.03 mg/kg is accomplished by soxhlet extraction of samples in acidic methanol to hydrolyze the glucoside metabolite into the phenol derivative. The analytes are separated by liquid-liquid extractions, cleanup on silica gel, and solid phase extraction. The phenolic derivative and parent are quantified by liquid chromatography/mass spectroscopy.

3. *Magnitude of residues.* The residue data in support of the proposed tolerances was generated from the magnitude of residue studies on grapes, peanuts, blueberry, cranberry, peanut, apple, sugar beet, plum, almond, wheat, citrus (grapefruit, orange, lemon), stone fruit (peaches, cherries, apricots), pecans, and bananas.

i. *Grape.* Fenbuconazole is registered for use on grapes in Latin America and Europe. An import tolerance petition has been submitted (PP 0E6208). Residue studies were conducted in Europe (12 trials) and in Central and South America (5 trials) in support of the import tolerance for grapes. In the Central and South American trials, a suspension concentrate (2F) formulation of fenbuconazole was applied at a single application of 0.3 kg active ingredient/hectare (a.i./ha). Grapes were collected at normal harvest, 61–139 days, after application. In the European trials, fenbuconazole (2F) was applied 3–8 times at a rate of 0.015-0.075 kg a.i./ha per application. Grapes were harvested at 21 days after the last application. The

combined residues, expressed as parent, were < 0.01-0.093 ppm in the Central and South American and 0.046–0.63 ppm in the European trials. Averages were 0.027 ppm in the Central and South American trials and 0.37 ppm in the European trials. Overall average for the 17 trials is 0.27 ppm. An import tolerance of 1.0 ppm is proposed.

ii. *Blueberry.* Eight magnitude of residue studies were conducted on blueberry in field sites located within the major blueberry growing regions in the U.S. recommended by the EPA. A wettable powder (75WP) formulation of fenbuconazole was applied five times at a rate of 0.094 lb active ingredient/Acre (a.i./A) per application. The application rate at one (NJ) of the field trials was 0.047 lb a.i./A per application. Mature fruits were harvested at 25–35 days after the final application. The combined residues, expressed as parent, were 0.013–0.183 ppm. The average residues were 0.069. A tolerance of 0.3 ppm is proposed.

iii. *Cranberry.* Five field trials were conducted in field sites located within the major cranberry growing regions in the U.S. recommended by EPA. Fenbuconazole was applied 5 times as a wettable powder (75WP) formulation at a rate of 0.19 lb/A per application. Mature fruits were harvested at 25-28 days after final application. The combined residues, expressed as parent, ranged from 0.09 ppm to 0.45 ppm with an average of 0.20 ppm. A tolerance of 1.0 ppm is proposed.

iv. *Peanut.* A total of thirteen magnitude of residue studies were conducted in field sites located within the major peanut growing regions in the U.S. recommended by the EPA. A suspension concentrate (2F) formulation of fenbuconazole was applied 6 times at one site and 8 times at the remaining twelve sites at a rate of 0.125 lb a.i./A per application. Peanuts were collected at normal harvest, 14–15 days after the final application. Peanuts were shelled and the nutmeat analyzed. The combined residues, expressed as parent, were non-detected to 0.056 ppm with an average of 0.015 ppm. A tolerance of 0.1 ppm is proposed.

v. *Apples.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for apples. In the apples, the raw agricultural commodity (RAC), the fenbuconazole residues ranged from approximately 0.1 mg/kg to approximately 0.3 mg/kg. Residues were measured in process fractions of apples, apple juice, and apple pomace. Concentration above the residue levels in the RAC occurred only in the pomace at approximately two-fold. Thus, no tolerance for juice is required, but a tolerance for pomace is required.

Seven field trials on apples were carried out in 1990 in six states: PA, WA, NC, MI, VA, and WV. Two application rates were used in each of the studies, the anticipated maximum application rate of 0.14 kg a.i./ha and a 2x exaggerated rate of 0.28 kg a.i./ha. A total of 8–10 applications were made at the normal timing in each trial, and the fruit was harvested at 0, 7, and 13 or 14 days after the final application. All samples were frozen immediately after they were harvested and were kept frozen until analysis, or shipped fresh immediately after harvest and processed and frozen immediately upon receipt and kept frozen until analysis. Samples were analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit, and residues were corrected for average fortification recoveries. As would be expected, the residue levels were seen to increase with decreased PHI and increased application rate. The average half-life of residue decline for 6 studies was 11.9–days. The average parent residue at 13–14 PHI at the 0.14 kg a.i./ha rate was 0.086 mg/kg.

Formulation bridging studies were conducted on apples in 1993. Apples grown in WA and PA were treated, in separate plots, with the 2F and 75 WP formulations of fenbuconazole at a rate of 0.14 kg a.i./ha/application. A total of ten or twelve applications were made using an airblast sprayer at the normal timing of each trial, and the fruit was harvested at 14 days after the final application (14–day pre-harvest interval (PHI). Samples were shipped fresh immediately after harvest and frozen immediately upon receipt and kept frozen until processing and subsequent analysis. Samples were analyzed using the residue analytical method for RH-7592 parent and metabolites in stone fruit, but residues were not corrected for average fortification recoveries. Total residues from the two trials were 0.226 and 0.135 mg/kg in the 2F formulation, and 0.184 and 0.162 mg/kg in the 75WP formulation. There were no significant differences in apparent residues found from the use of the two formulations, and residues due to parent compound constituted greater than 85% of the total residues found on the fruit.

Seven field residue trials were conducted on apples in 1995, in CA, CO, MI, NY, OH, OR, and WA. Apples were treated with dilute (0.014 kg active ingredient hectoliter (a.i./hl) and concentrate (0.035 kg a.i./hl) sprays of the 2F formulation of fenbuconazole at a rate of 0.14 kg a.i./ha. A total of 8–10 applications were made using airblast sprayers, with first application at early bud break and subsequent applications on a 10–14 day schedule through bloom and a 14 to 21 day schedule in the cover sprays until harvest. The apples were harvested by hand at a PHI of 14–days. Residue samples were analyzed using the residue analytical method for RH–7592 parent and metabolites in stone fruit, but residues were not corrected for average fortification recoveries. Samples from 3 sites were also analyzed using the residue analytical method for metabolite RH-7905. Metabolite RH-7905 was not detected in any of the samples. The total residues from the concentrate sprays ranged from 0.015 to 0.274 mg/kg and averaged 0.137 mg/kg. The total residues from the dilute sprays ranged from 0.019 to 0.295 mg/kg and averaged 0.139 mg/kg. There is not a significant difference in the magnitude of the residues between dilute and concentrate spray volumes of the 2F formulation of fenbuconazole.

An additional residue study was conducted on apples grown in PA in 1994 and the fruit was used for a processing study. The apples received nine foliar applications of the 2F formulation of fenbuconazole at the normal timing at a rate of 0.14 kg a.i./ha/application. The fruit was harvested 14–days after the last treatment. The raw agricultural commodities (RAC) samples were shipped fresh and either immediately processed or frozen for storage. All RAC and processed samples were analyzed within a less than 30–day period, eliminating the need for generation of storage stability data. The apples were processed at the Food Research Laboratory of Cornell University using methodology simulating commercial apple processing. Briefly, the processing consisted of washing the apples in water, grinding in a hammer mill to apple mash, and pressing of the mash to form both fresh apple juice and wet pomace. The juice was either canned (sampled as unpasteurized juice) or canned and pasteurized (sampled as pasteurized juice). The wet pomace (moisture content 69%) was also sampled. All samples were frozen on generation and stored frozen until analysis. Samples were analyzed using the residue analytical method for RH-7592 and metabolites in stone fruit, and residues were not corrected for average fortification recovery. The average total residues for each component, and its concentration factor, were as follows: Unwashed fruit 0.065 mg/kg NA, washed fruit 0.070 mg/kg NA, wet pomace 0.159 mg/kg 2.46, unpasteurized juice 0.004 mg/kg 0.06,

pasteurized juice 0 mg/kg 0.00. No concentration of residues was seen in the human diet component, i.e., apple juice. Concentration of residues of approximately 2–fold was seen in wet pomace, which is not a component of the human diet.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. Residues in animals declined significantly during the depuration period. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver were proposed based on the animal data.

vi. *Sugar beets.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for sugar beets. Following full season foliar treatment, the residues of fenbuconazole were higher in the sugar beet tops than in the root. Combined residues in root averaged 0.415 mg/kg. Residues in tops were more variable, and ranged from 0.56–8.89 mg/kg. In a formulation bridging study the residues were higher in the sugar beet tops compared to the root. Total root residues in the 75WP formulation ranged from 0.0061 to 0.268 mg/kg and averaged 0.0616 mg/kg. Total root residues in the 2F formulation ranged from 0.0223 to 0.0523 mg/kg and averaged 0.0328 mg/kg. Total top residues averaged 2.15 mg/kg in the 75WP formulation, and 2.69 mg/kg in the 2F formulation. There was no significant difference in residues between formulations of fenbuconazole. In a processing study the concentration factor for each component was: Root 1.0X, dry pulp 5.39X, molasses 1.82X, and refined sugar 0.1X. Compared to raw roots, a reduction of residues was seen in the human diet component, sugar. Concentration of residues was seen in molasses and dry pulp, neither of which is a component of the human diet.

vii. *Plum.* A total of ten field residue trials were conducted in plums. Six to nine applications were made at the maximum use rate of 0.1 lb active ingredient/Acre (a.i./A) and whole fruit was harvested on the same day as the last application. The highest field residue value in whole fruit was 0.315 ppm; the next highest field residue value was 0.071 ppm. The average field residue value in whole fruit was 0.062 ppm. Residues were measured in dried plums (prunes) in three residue trials. Six applications were made at the maximum use rate of 0.1 lb a.i./A , and whole fruit was harvested on the same day as the last application. Dried plums contained residues of 0.02, 0.04, and 0.014 ppm.

viii. *Almonds.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for almonds. There are no process fractions of almonds. Six field trials in almonds were carried out at 5 sites in CA in 1987. In all of the studies, the anticipated maximum application rate of 0.11 kg a.i./ha and a 2X exaggerated rate of 0.22 kg a.i./ha. A total of three applications were made at the normal timing in all trials, and the almonds were harvested at maturity, 127–200 days after the final application. Samples were shipped fresh or frozen. Hulls were separated from the nuts and processed in a Hobart food processor with dry ice or in a Wiley Mill without dry ice. Nuts were shelled and the nutmeat homogenized in a Waring food processor with dry ice. The processed samples were stored frozen until analysis. Samples were analyzed using the residue analytical method for RH-7592 and metabolites. No residue in any nutmeat sample at the 1x application rate reached 0.01 mg/kg. Residues in the hull at the 1x rate ranged from 0.1 to 1.5 mg/kg. One nutmeat sample treated at the 2x rate had a quantifiable residue of 0.027 mg/kg. The remainder had no detectable residue. Hull sample residues from the 2x rate ranged from 0.5 to 6.6 mg/kg.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. Residues in animals declined significantly during the depuration period. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver were proposed based on the animal data.

ix. *Wheat.* Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for wheat. In the wheat grain, the raw agricultural commodity, the fenbuconazole residues ranged from no detectable residue (NDR < LOQ = 0.01 mg/kg) to approximately 0.01 ppm. In wheat straw the fenbuconazole residues ranged from approximately 0.05 ppm to approximately 4.5 ppm. Residues were measured in processed fractions of wheat including cleaned grain, bread, patent flour, flour, red dog, bran, shorts/germ, and middlings. EPA concluded that, no concentration above the residue levels in the RAC occurred so no tolerances for any of these commodities were required. Tolerances of 0.05 ppm in wheat grain and 10 ppm in wheat straw are proposed based on these data.

Feeding studies in the cow, goat, and hen indicated that the only animal commodities which require tolerances are fat and liver. There were no significant residues in eggs or milk at any dose level. In cows there were residues in fat only at the 10x level in one animal at 0.06 mg/kg. Liver contained quantifiable residues in all dose groups and the magnitude of the residue correlated closely with the dose level. At study day 28 the 1 x livers averaged 0.08 mg/kg. Residues declined significantly during the depuration period. In the fat and liver one of the components of the fenbuconazole tolerance expression has a LOQ = 0.05 mg/kg. Because there were detectable residues only in liver, not fat, at the 1x level, the LOQ of the least sensitive component drives the fat tolerance. Tolerances of 0.05 ppm in fat and 0.3 ppm in liver are proposed based on the animal data.

x. *Citrus.* The residue data in support of the proposed tolerance of 1.0 ppm in citrus were generated from the magnitude of residue studies on grapefruits, oranges, and lemons.

a. *Grapefruit.* Magnitude of residue studies were conducted in 1992–1994 at field sites located within the major grapefruit-growing regions in the U.S. recommended by the EPA. A suspension concentrate formulation of fenbuconazole containing 24% a.i. was applied 3 times at a nominal rate of 0.25 lb a.i./A per application. Applications were made using an airblast sprayer and at an interval of 21–28 days in between applications. Mature fruits from control and treated plots were harvested at 0–day after the last application. In some trials, pulp was separated and analyzed. All samples were analyzed for fenbuconazole and its lactone metabolites RH-9129 and RH-9130. Total residues of fenbuconazole and its lactone metabolites (expressed as fenbuconazole) were 0.10–0.494 ppm in whole fruit with an average of 0.21 ppm. Nearly all of the pulp samples showed no detectable residues.

b. *Orange.* Magnitude of residue studies were conducted in 1992–1994 and 1997 at field sites located within the major orange-growing regions in the U.S. recommended by the EPA. A

suspension concentrate formulation of fenbuconazole containing 24% a.i. was applied 3 times at a nominal rate of 0.25 lb a.i./A per application. Applications were made using an airblast sprayer and at an interval of 20–28 days in between applications. Mature fruits from control and treated plots were harvested at 0–day after the last application. In some trials, pulp was separated and analyzed. All samples were analyzed for fenbuconazole and its lactone metabolites RH-9129 and RH-9130. Total residues of fenbuconazole and its lactone metabolites (expressed as fenbuconazole) were 0.126–0.678 ppm in whole fruit with an average of 0.281 ppm. Residues in the pulp are < LOQ (0.01 ppm).

c. *Lemon.* Magnitude of residue studies were conducted in 2,000 at field sites located within the major lemon-growing regions in the U.S. recommended by the EPA. A suspension concentrate formulation of fenbuconazole containing 25% a.i. was applied 3 times at a nominal rate of 0.25 lb a.i./A per application. Applications were made using an airblast sprayer and at an interval of 20–22 days in between applications. Mature fruits from control and treated plots were harvested at 0–day after the last application. A sub-sample of the lemon fruits were also prepared as peeled fruits. All samples were analyzed for fenbuconazole and its lactone metabolites RH-9129 and RH-9130. Total residues of fenbuconazole and its lactone metabolites (expressed as fenbuconazole) were 0.523–0.837 ppm in whole fruit and 0.019–0.173 ppm in the pulp. The average residues were 0.650 ppm in whole fruit and 0.067 ppm in the pulp. The residue data from the lemon trials support the tolerance of 1.0 ppm in citrus.

xi. *Stone fruit*—a. *Peaches.* Ten field trials were conducted on peaches. 7–10 applications were made at the maximum use rate of 0.1 pounds of active ingredient per acre (lb a.i./acre) per application, and fruit was harvested on the last day of application. The highest field residue value was 0.51 ppm, and the average field residue value was 0.36 ppm.

b. *Cherries.* Eleven field trials were conducted on cherries. Five to 6 applications were made at the maximum use rate of 0.1 lb a.i./acre per application, and fruit was harvested on the last day of application. The highest field residue value was 0.63 ppm, and the average field residue value was 0.43 ppm.

c. *Apricots.* Four field trials were conducted on apricots. Six applications were made at the maximum use rate of 0.125 lb a.i./acre per application, and fruit was harvested on the last day of application. The field residue values in four samples measured were 0.17, 0.23, 0.27, and 0.28 ppm.

xiii. *Pecans.* Four field trials were conducted in pecans. Eight to 10 applications were made at the maximum use rate of 0.125 lb a.i./acre per application, and nuts were harvested 28–days after the last application. Field residue values in nutmeat for all four trials were < 0.01 ppm.

xiv. *Bananas.* Eighteen field trials were conducted on bagged bananas, which are typically used in commerce. Eight applications (5 and 7 applications in two trials) were made at the maximum use rate of 0.09 lb a.i./acre per application and bananas were harvested on the last day of application. The highest field residue value in whole fruit or in pulp and peel combined was 0.062 ppm. The average field residue value in whole fruit or in pulp and peel combined was 0.03 ppm.

The results of these studies support the proposed permanent tolerances for fenbuconazole on stone fruit, pecans, and bananas.

B. Toxicological Profile

1. *Acute toxicity.* Fenbuconazole is practically non-toxic after administration by the oral and dermal routes, and was not significantly toxic to rats after a 4 hour inhalation exposure. Fenbuconazole is classified as not irritating to skin and inconsequentially irritating to the eyes. It is not a skin sensitizer.

2. *Genotoxicty.* Fenbuconazole was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation. Fenbuconazole was negative in a hypoxanthine guanine phosphoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, fenbuconazole did not induce unscheduled DNA synthesis (UDS) or repair. Fenbuconazole did not produce chromosome effects in rats *in vivo.* On the basis of the results from this battery of tests, it is concluded that, fenbuconazole is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity—i. Developmental toxicity in the rat.* In the developmental study in rats, the maternal (systemic) no observed adverse effect level (NOAEL) was 30 mg/kg/day based on decreases in body weight and body weight gain at the lowest observed adverse effect level (LOAEL) of 75 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on an increase in post implantation loss and a significant decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day.

ii. *Developmental toxicity in the rabbit.* In the developmental study in rabbits, the maternal (systemic) NOAEL was 10 mg/kg/day based on decreased body weight gain at the LOAEL of 30 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on increased resorptions at the LOAEL of 60 mg/kg/day.

iii. *Reproductive toxicity.* In the 2-generation reproduction toxicity study in rats, the maternal (systemic) NOAEL was 4 mg/kg/day based on decreased body weight and food consumption, increased number of dams delivering nonviable offspring, and increases in adrenal and thyroid weights at the LOAEL of 40 mg/kg/day. The reproductive (pup) NOAEL was 40 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity—i. Rat 90–day oral study.* A subchronic feeding study in rats conducted for 13–weeks resulted in a NOAEL of 80 parts per million (ppm) (5.1 and 6.3 mg/kg/day in males and females, respectively). The only effect observed at 80 ppm was minimal centrilobular hypertrophy (seen in one male) and hepatocytic centrilobular vacuolation (3 males) with no concomitant increase in liver weight or clinical chemistry correlates and no analogous effects in females. As such, these observations are not considered to be adverse. Increased liver weight, hepatic hypertrophy, thyroid hypertrophy, and decreased body weight were observed at the higher doses of 400 and 1,600 ppm.

ii. *Dog 90–day oral study.* A subchronic feeding study in dogs conducted for 13–weeks resulted in a NOAEL of 100 ppm (3.3 and 3.5 mg/kg/day in males and females, respectively). At the LOAEL of 400 ppm, increased liver weight, clinical chemistry parameters, and liver hypertrophy (males) were observed.

iii. *Rat 4–week dermal study.* In a 21–day dermal toxicity in the rat study, the NOAEL was greater than 1,000 mg/kg/day, with no effects seen at this limit dose.

5. *Chronic toxicity—i. Dog.* A 1–year feeding study in dogs resulted in a NOAEL of 15 ppm (0.62 mg/kg/day) for females and 150 ppm (5.2 mg/kg/day) for males. Decreased body weight, increased liver weight, liver hypertrophy, and pigment in the liver were observed at the LOAEL of 150 and 1,200 ppm in females and males, respectively.

ii. *Mouse.* A 78–week chronic/oncogenicity study was conducted in

male and female mice at 0, 10, 200 (males only), 650, and 1,300 ppm (females only). The NOAEL was 10 ppm (1.4 mg/kg/day), and the LOAEL was 200 ppm (26.3 mg/kg/day) for males and 650 ppm (104.6 mg/kg/day) for females based on increased liver weight and histopathological effects on the liver, which were consistent with chronic enzyme induction. There was no statistically significant increase of any tumor type in males. However, there was a statistically significant increase in combined liver adenomas and carcinomas in females at the high dose only (1,300 ppm; 208.8 mg/kg/day). There were no liver tumors in the control females, and liver tumor incidences in the high-dose females just exceeded the historical control range. In ancillary mode-of-action studies in female mice, the increased tumor incidence was associated with changes in several parameters in mouse liver following high doses of fenbuconazole, including an increase in P450 enzymes (predominately of the CYP 2B type), an increase in cell proliferation, an increase in hepatocyte hypertrophy, and an increase in liver weight. Changes in these liver parameters, as well as the occurrence of the low incidence of liver tumors, were non-linear with respect to dose (i.e., effects were observed only at high dietary doses of fenbuconazole). Similar findings have been shown with several pharmaceuticals, including phenobarbital, which is not carcinogenic in humans. The non-linear dose response relationship observed with respect to liver changes (including the low incidence of tumors) in the mouse indicates that these findings should be carefully considered in deciding the relevance of high-dose animal tumors to human dietary exposure.

iii. *Rat.* A 24–month chronic/oncogenicity study in male and female rats was conducted at 0, 8, 80, and 800 ppm fenbuconazole, and a second 24–month chronic/oncogenicity study was conducted in male rats at 0, 800, and 1,600 ppm. The NOAEL was 80 ppm (3 and 4 mg/kg/day in males and females, respectively), and the LOAEL was 800 ppm (31 and 43 mg/kg/day in males and females, respectively) based on decreased body weight, increased liver and thyroid weights, and liver and thyroid hypertrophy. Fenbuconazole produced a minimal but statistically significant increase in the incidence of combined thyroid follicular cell benign and malignant tumors. These findings occurred only in male rats following life-time ingestion of very high levels (800 and 1,600 ppm in the diet) of fenbuconazole.

iv. *Carcinogenicity.* The Agency has concluded, that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** (51 FR 33992, September 24, 1986), and recommended that for the purpose of risk characterization a low-dose extrapolation model applied to the experimental animal tumor data should be used for quantification of human risk (Q1*). EPA's 26 Feb 1998 Hazard Identification Assessment Review Committee (HIARC) report concluded that 0.00359 $(mg/kg/day)^{-1}$ is the appropriate Q* for fenbuconazole; this Q* is based on the fenbuconazole mouse liver tumor data, along with a power surface area scaling factor.

6. *Animal metabolism.* The absorption, distribution, excretion, and metabolism of fenbuconazole in rats, goats, and hens were investigated. Following oral administration, fenbuconazole was completely and rapidly absorbed, extensively metabolized by oxidation/hydroxylation and conjugation, and rapidly and essentially completely excreted, predominately in the feces. Fenbuconazole did not accumulate in tissues.

7. *Metabolite toxicology.* There are no toxicological concerns for fenbuconazole based on differential metabolic pathways in plants and animals. Triazole fungicides are known to produce three common metabolites, 1,2,4-triazole, triazolylalanine and triazole acetic acid. 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. This interim assessment was summarized in the **Federal Register** notice dated August 4, 2004 and titled Propiconazole; Time-Limited Pesticide Tolerances. 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.

8. *Endocrine disruption.* The mammalian endocrine system includes estrogen and androgens as well as other hormonal systems. Fenbuconazole is not known to interfere with reproductive hormones; thus, fenbuconazole should not be considered to be estrogenic or androgenic. There are no known instances of proven or alleged adverse reproductive or developmental effects to people, domestic animals, or wildlife as a result of exposure to fenbuconazole or its residues.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Dietary exposure assessments for fenbuconazole were conducted using the dietary exposure evaluation model (DEEM) software with the food commodity intake data base (DEEM-FCID, version 2) which incorporates food consumption data as reported in the Continuing Survey of Food Intake by Individuals (CSFII) Survey 1994–1996 and 1998. These exposure assessments include all existing uses under section 3 registrations (stone fruit except plums or prunes, pecans and bananas), grape (import, PP 0E6208), peanut (PP 9F6024), blueberry (PP 9E5041), cranberry (1E6252) and all other pending section 3 registrations including apple (PP 2F4135), sugar beet (PP 7F4887), plums and prunes (PP 1F3989), the citrus crop group (PP 7F4900, 7F4901), almond (PP 3F4914, 3H5663), wheat (PP 2F4127) as well as animal commodities. The assessments were performed in 3 levels. In the first assessment, a Tier 1 analysis was conducted with the assumption that 100% of the crops would be treated with fenbuconazole and that residues would be present at the tolerance levels. Also, default processing factors were used except for commodities with tolerances. In the second assessment (Tier 2), similar assumptions were made but the tolerance residues were adjusted with percent crop treated (PCT) from Doane data base available for apricot, cherry, peach, grapefruit, and pecan or from estimated market share for all other commodities. A Tier 3 analysis was used to estimate dietary exposure for the cancer risk assessment. This assessment was refined using available PDP data, average field trial residues adjusted for PCT and available processing factors except for commodities with tolerances.

a. *Acute dietary exposure.* Although, no acute adverse effect was observed as a result of exposure to a single dose, EPA has established an acute reference dose (aRfD) for the purpose of the acute dietary assessment. This aRfD was set at 0.3 mg/kg/day for females 13+ years old, the population sub-group of concern. This was based on the developmental rat toxicity study with a NOAEL of 30 mg/kg/day and an uncertainty factor of 100. The 100-fold safety factor includes intraspecies and interspecies variations. Using the above assumptions for Tier 1 assessment, the food exposure for females 13+ years old at the 95th

percentile was estimated to be 0.0133 mg/kg/day which utilized less that 5% of the acute RfD.

b. *Chronic dietary exposure.* EPA has established a chronic reference dose (cRfD) for fenbuconazole at 0.03 mg/kg/day for all population subgroups. The cRfD is based on the 2–year combined chronic feeding-carcinogenicity study in rats with a NOAEL of 3.03 and 4.02 mg/kg/day in males and females respectively, and an uncertainty factor of 100. The 100-fold safety factor includes intraspecies and interspecies variations. No additional FQPA safety factor is required. The food exposure for the overall U.S. population was estimated for the Tier 1 assessment to be 0.0044 mg/kg/day which utilizes 14.8% of the cRfD. The population subgroup with the highest potential for exposure was children 1–2 years at 62.7% of the cRfD with estimated food exposure of 0.0188 mg/kg/day. For the Tier 2 assessment, the estimated food exposure was reduced to 2.5% of the cRfD for the general population and 9.2% of the cRfD for children 1–2 years.

c. *Cancer dietary exposure.* EPA has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) and has established a Q1* of 0.00359 $(mg/kg/day)^{-1}$ in human equivalents. Using a Tier 3 assessment, the food exposure was estimated to be 0.000074 mg/kg/day with a cancer risk estimate of 2.64×10^{-7}.

ii. *Drinking water.* The estimated drinking water concentration (EDWC) was calculated using the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) which predicts an annual average of 0.22 ppb. These results are considered a conservative assessment of possible concentration of fenbuconazole in drinking water. Using this value of 0.22 parts per billion (ppb), for dietary consumption of water in the DEEM-FCID chronic analysis results in the exposure from drinking water to be insignificant at < 0.1% of the cRfD for all population subgroups. Additionally in a later assessment the Agency used (Generic Estimated Environmental Concentration) GENEEC and (Screening Concentration in Ground Water) SCI-GROW models to estimate the environmental concentrations (EECs) for surface water and ground water. The EECs for fenbuconazole are 6.7 ppb for acute and 3.6 ppb for chronic exposure. Since the EECs in ground water are much lower than the EECs in surface water, conservatively only the surface water EECs were used for comparison with the drinking water levels of comparison (DWLOC). Drinking water levels of comparison (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 and from residential uses. DWLOC is not a regulatory standard for drinking water, but is used as a point of comparison against the estimated potential concentrations in ground water or surface water. It is calculated by subtracting the food dietary exposure (from DEEM analysis) from the RfD and then expressed as µg/L using default body weights (70 kg for adult and 10 kg for infants) and drinking water consumption (2 L/day for adults and 1 L/day for children). The acute DWLOC for females 13 years and older (population sub-group of concern) using Tier 1 assumptions was calculated to be 8602 µg/L. The chronic DWLOC for the general U.S. population and children 1–2 years (population sub-group of concern) was calculated to be 895 µg/L and 112 µg/L, respectively using Tier 1 assumptions. The cancer DWLOC is the concentration in drinking water that results in a negligible cancer risk of 1×10^{-6}. Using the Tier 3 assessment, the estimated chronic food exposure is 0.000074 mg/kg/day for the general U.S. population. Assuming a negligible cancer risk of 1×10^{-6} and the Q1* of 0.00359 $(mg/kg/day)^{-1}$, the maximum allowable water exposure is 0.000205 mg/kg/day resulting in a calculated cancer DWLOC of 7 µg/L. When comparing the EEC to the cancer DWLOC, the Agency policy states that a factor of 3 will be applied to GENEEC modeled values because the estimated environmental concentration is derived from a 56–day average value and not a longer-term average. Applying a factor of 3, the EEC is 1.2 µg/L which is less than the calculated cancer DWLOC of 7 µg/L. The DWLOCs are substantially greater than the estimated residue concentration in ground water or surface water, therefore, exposure to fenbuconazole would not result in unacceptable levels of aggregate human health risk.

2. *Non-dietary exposure.* Fenbuconazole is not currently registered for use on any sites that would result in residential exposure. Thus, the risk from non-dietary exposure would be considered negligible.

D. Cumulative Effects

Fenbuconazole is a member of the triazole class of fungicides. At this time, EPA does not have available data to determine whether fenbuconazole exhibits a common mechanism of toxicity with other triazole fungicides. For purposes of this tolerance action, it is assumed that fenbuconazole does not have a mechanism of toxicity common with other substances and no cumulative risk is required.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions (Tier 1) and taking into account the completeness and reliability of the toxicity data, the chronic dietary food exposure from all section 3 registered and pending uses will utilize 14.8% of the cRfD for the U.S. population. Slight refinement (Tier 2) results in reduced risk estimates of 3% of cRfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to fenbuconazole residues from the proposed uses. The acute dietary food exposure at the 95th percentile for females 13+ years, the population sub-group of concern, is approximately 5% of the acute RfD. Therefore, there is no concern for acute exposure because the acute RfD represents the level at or below which a single daily exposure will not pose appreciable risk to human health. Additionally, the potential contribution of fenbuconazole residues in drinking water is expected to be minimal. Using a refined assessment (Tier 3), the cancer risk is 2.65×10^{-7}. Generally the Agency has no concern for exposures that result in a cancer risk estimate below 1×10^{-6}. Including the potential for exposure in drinking water, the cancer risk is not expected to exceed 1×10^{-6} for the U.S. population as a whole.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fenbuconazole, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of offspring. The completeness and adequacy of the toxicity data base is also considered. No indication of increased susceptibility to infants and children was noted in these

studies for fenbuconazole. EPA has previously determined that no additional safety factor to protect infants and children is necessary for fenbuconazole and that the RfD of 0.03 mg/kg/day is appropriate for assessing risk to infants and children.

Using a conservative Tier 1 assessment, the chronic dietary exposure for fenbuconazole will utilize 62.7% of the cRfD for children 1–2 years old. Slight refinement (Tier 2) reduces the exposure to 9.2% for children 1–2 years old. Even when considering the potential exposure to drinking water, the aggregate exposure is not expected to exceed 100% of the cRfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences concludes with reasonable certainty that no harm will result to infants and children from the aggregate exposure to fenbuconazole from all current and pending uses.

F. International Tolerances

International CODEX values are established for apricot, banana, barley, barley straw and fodder, cattle fat, meat, milk and edible offal, cherries, cucumber, eggs, grapes, melon except watermelon, peach, plum, pome fruits, poultry fat, meat and edible offal, rape seed, rye, summer squash, sunflower, and wheat.

[FR Doc. 05–14285 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0182; FRL–7722–2]

Alkoxylated Ether Amines; Notice of Filing of a Pesticide Petition to Establish a Tolerance Exemption for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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

DATES: Comments, identified by docket identification (ID) number OPP–2005–0182, must be received on or before August 19, 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: Rame Cromwell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9068; e-mail address: *cromwell.rame@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0182. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

For public commenters, it is important to note that EPA's policy is that public comments, whther 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–2005–0182. 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–2005–0182. 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–2005–0182.

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–2005–0182. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

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

II. What Action is the Agency Taking?

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

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: July 11, 2005.

Lois A. Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

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

Tomah³ Products, Inc.

PP 5E6952

EPA has received a pesticide petition (PP 5E6952) from Tomah³ Products, Inc., 337 Vincent Street (P.O. Box 388), Milton, Wisconsin 53563–0388 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the use of any member of the class of alkoxylated surfactant inert ingredients described as 1-propanamine, N,N-polyoxaalkyl-, [3-(X-alky)oxy]polyoxaalkyl (derivs.); polyalkoxy, α, α'-(imino)bis[ω-hydroxy-, N-[3-[(X-alkyl)oxy]polyoxaalkyl]propyl (derivs.); polyalkoxy, α-[3-N,N-bis(polyoxaalkyl)]amino]propyl]-ω-hydroxy-monoalkyl ethers; or polyalkoxy, α-[3-[bis(hydroxyalkyl)amino]propyl]-ω-hydroxy-, ether with α-hydro-ω-hydroxypolyalkoxy (1:2), monoalkyl ethers containing 0 to 20 internal repeating alkoxy units (methoxy-, ethoxy-, propoxy-, or acetoxy-); 1 to 14 terminal repeating alkoxy units (ethoxy- or propoxy-); and 6 to 22 carbons in an n-alkyloxy-, isoalkyloxy- or branched alkyloxy- chain, in or on the all raw agricultural commodities and food. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Any residues are expected to be parent alkoxylated amines as described above.

2. *Analytical method*. Since this petition is for an exemption from the requirement of a tolerance, an analytical method is not required.

3. *Magnitude of residues*. This application is designed to follow EPA's new methodology for the evaluation of low toxicity substances used in pesticide products. To develop exposure estimates, residue data for pesticide active ingredients were used as described below as surrogate data for the class of inert ingredients. Several complementary approaches were used.

Tier 1 Screening Level scenarios (i.e., bounding extreme worst-case) included the following exposure assumptions. Actual crop-specific residue data for active ingredients, including secondary residues were used as surrogates for the surfactants without adjustment for the percentage of inert in the formulation. Data were used for all herbicides used at >5,000,000 pounds/year (lbs/yr) and all fungicides and insecticides used at >1,000,000 lbs/yr, including all active ingredients used in significant amount on the top 25 crops consumed by children; Both acute and chronic exposure levels were determined; The assessment assumed that 100% of all crops are treated with pesticides containing the surfactants.

More sophisticated Tier 2 worst-case scenarios included the following exposure assumptions. For chronic exposure, actual crop-specific residue data are used as surrogates for the surfactants, with adjustment for percentage of the inert in the formulation using an upper-bound value of 17.1%; Frequency of detection of pesticides was used as a method of ranking all pesticides monitored in the U.S. for residues. The top 30 pesticides were found to account for 99.9% of the total dietary intake of pesticide residues and were selected as the surrogates to use in estimating exposure. Exposure levels were determined using actual residue and frequency data for the 30 most frequently detected residues.

For acute exposures, EPA's Cumulative OP Acute Dietary Exposure Distribution estimated for Children (1 to 2 years) in Florida (EPA, 2002) was used as a surrogate. No adjustment was made to convert the active ingredient exposure for actual percentage of inert ingredient used in the formulation. The methamidophos-equivalent exposure estimates were used directly to approximate the magnitude of potential acute dietary exposures to the alkoxylated surfactants. Exposure estimates were made for the 90th%, 95th% and 99.9th% consumption.

B. Toxicological Profile

1. *Acute toxicity*. Only a small amount of primary data are available on the acute toxicity of substances within the proposed class of alkoxylated surfactants. These data have been supplemented in the assessment described below by using publicly available data on the toxicology of alkyl amines and related derivatives.

i. *Acute dermal toxicity and eye irritation*. Virtually all of the amines when administered directly or in concentrated solution are primary skin and eye irritants. Animals exposed to concentrated vapors exhibit signs and symptoms of mucous membrane and respiratory tract irritation. Direct skin contact with liquid amines can produce severe burns and necrosis. Little toxicity information is available on amines containing eight or more carbons. But it is clear that these amines, either as the neat liquid, or in concentrated solution, would be strong local irritants for eyes, skin, and mucous membranes. The lowered vapor pressure for the higher alkyl amines would tend to reduce the hazard from vapor exposure.

ii. *Acute oral toxicity*. Estimated lethal dose $(LD)_{50}$ for alkoxylated compounds - 300 - 500 milligram/kilogram (mg/kg). The LD_{50}s for the shorter chain primary amines (C_2–C_8) are in the 300–500 mg/kg range. Secondary amines are slightly more toxic than the corresponding primary amines. As the chains increase in length beyond C_{12}–C_{16} there is an observable reduction in toxicity. For example, the acute oral LD_{50} for octadecylamine (C18H39N) in mice and rats is approximately 2–3 grams (g)/kg compared to the 300–500 mg/kg range for the shorter chain amines. The addition of an alcohol group to the molecule reduces the toxicity significantly. The alkanolamines and the alkylalkanolamines are typically 3–5 times less toxic than their amine congeners. For this reason it is expected that the addition of propoxylate or ethoxylate groups will not confer additional toxicity beyond that of the amine itself, and is likely to tower toxicity substantially.

iii. *Alkyl amines vs alkanolamines*. The acute toxicity of the alkylamines are reduced from 4 to 20-fold by the introduction of hydroxyl groups into the molecule. The toxicity of the alkyl amines is reduced approximately 5-fold as the molecular weight increases from C_2 to C_{16} and higher.

2. *Genotoxicity*. There is no indication that any alkyl amine is mutagenic. Zeiger, *et al.* (*Zeiger, E., Anderson B, Haworth S, Lawlor T, Mortelmans K and*

W Speck (1987) ''*Salmonella* Mutagenicity tests: III. Results from the testing of 255 chemicals.'' *Environ Mutagenesis*, (1987) 3: Suppl (9)1–110.) reported on the *Salmonella* Mutagenicity of 255 chemicals including 25 alkyl amines. Twenty three of the alkyl amines tested negative in the Ames test both with and without activation and only two substituted amines were weakly positive (N-hydroxyethylethylenediamine and monoisopropanolamine).

3. *Reproductive and developmental toxicity*. Genamin TA (CAS # 61790–33–8), a mixture consisting primarily of C_{16}–C_{18} primary amines was given to both male and female rats 14 days prior to mating continually for 54 days thereafter. (Bussi R (2000) ''Genamin TA 100: Reproduction/Development toxicity Screening Test in rats by oral route.'' *APAG*, Instituto di Recerche Biomediche, 'Santoine Marxer' S.p.a.). The author noted that the no observed adverse effect level (NOAEL) for parental toxicity and for effects on offspring was 12.5 mg/kg. The reported NOAEL for fertility was 50 mg/kg.

4. *Subchronic toxicity*. N-methyl-N-octadecyl-1-octadecanamine was administered to rats for 90–days at doses of 1,500, 5,000, and 15,000 ppm in the diet. Doses were reduced after week 4 to 1,500, 4,000 and 10,000 ppm. The presence of histiocytosis in all groups precluded the establishment of a NOAEL in this dose range. The lowest observed adverse effect level (LOAEL) was 1,500 ppm or 75 mg/kg bw/day. (Procter and Gamble EPA submission, No. 88–9200007039, microfiche No. OTS537649). Subchronic studies have also been conducted on a few alkanolamines. Ethomeen T/12 (CAS # 61791–44–4) Ethanol,2,2-iminobis-, N-tallow alkyl derivatives at doses of 15, 50, 150, and 450 mg/kg were fed to rats in their diet for 90–days. Ethomeen T/12 is a mixture of polyoxyethylene tallow amines. Gross macroscopic effects were seen and body weight (bw) gain was reduced only at the 450 mg/kg level. Microscopic findings were seen in the intestine and regional mesenteric nodes levels of 150 mg/kg and greater. The NOAEL was 50 mg/kg and the LOAEL was 150 mg/kg. A similar study was conducted in dogs at doses of 13, 40, and 120 mg/kg. Vomiting occurred at doses of 40 mg and higher. No gross pathologic variations or lesions were observed in any dose group. Histological evaluation revealed an increase in the incidence of foamy macrophages in the small intestine and regional lymph nodes in the 40 mg/kg and 120 mg/kg dose groups. The NOAEL was 13 mg/kg/day and the LOAEL 50 mg/kg/day (Goater T.O., Griffiths D., McElliogott T.F., and AAB Swan, A.A.B, (1970), ''Summary of toxicology data- acute oral toxicity and short-term feeding studies on polyoxythylene tallow amines in rats and dogs,'' *Food and cosmetics Toxicol.* 8:249–252.).

5. *Chronic toxicity*. Octadecylamine (CH3(CH2)17 NH2) has been administered to rats in a two-year rat feeding study. (Deichmann, W.B., Radomski, J.I., MacDonald, W.E., Kascht, R.L., and Erdman, R.l., (1958), *A.M.A. Arch. Ind. Health,* 18:483). The NOAEL was 500 ppm in the diet and 3,000 ppm was a LOAEL. Rats fed 3,000 ppm showed some weight loss, anorexia, and some histological changes in the gastrointestinal tract, mesenteric nodes, and liver. This NOAEL gives an allowable daily intake (ADI) of 0.25 mg/kg bw/day using a 100-fold safety factor. (500 ppm in old rats corresponds to 25 mg/kg bw/day). An earlier one year oral study in dogs by Deichmann (Deichmann, W.B., et.al., (1957), *Arch. Ind. Health,* 18:483–487), reported a slight weight decrement at the highest of three doses (0.6, 3.0, and 15 mg/kg bw/day). The NOAEL from this study was 3.0 mg/kg bw/day. A corresponding ADI would be 0.03 mg/kg bw/day, or about 8-fold lower than the study in rats.

Most of the amine repeat-dose toxicology studies yield NOAELs in the 3 - 50 mg/kg bw/day range. The lowest repeated dose NOAEL in these reports is 3.0 mg/kg bw/day (both rabbit developmental study with olelyamine and 1-yr chronic dog study with octadecyl amine). The application of these data for alkoxylated amines depends on the toxicity of other members of this surfactant family having the same or lesser order of toxicity as the long chain fatty amines.

The alkoxylateds in this submission differ from the simpler alkyl amines in two ways; first they are alkoxylated, which introduces polar ether linkages, second they additionally have two charged carboxyl groups on the end of the molecule. Both of these charges make the molecule more polar, and can decrease the systemic toxicity of the substance. The increased polarity can make the substances easier to eliminate in the urine. The increased number of ether linkages can make the substance harder to absorb. For these reasons, we believe that the NOAELS of the ether amines establish an upper bound to the toxicity of the alkoxylateds at approximately 10 mg/kg bw/day; the alkoxylateds themselves should be considerably less toxic. Given that there are no repeat-dose toxicity data in animals available on the alkoxylateds, we have endeavored, via a weight-of-evidence approach, to demonstrate that as the alkyl amine core of the molecule is modified by the introduction of polar constituents, the toxicity is decreased. Thus the toxicity of the alkoxylateds will be below that of the amines. In the discussion below, we show how the introduction of polar groups reduces the toxicity of several related classes of substances and how an average numerical bound might be placed on this effect.

With reference to the report of the American Chemistry Council's report of the Fatty Nitrogen Derivatives Panel Amines Task Group (Fatty Nitrogen Derivatives Panel Amines Task Group, 2002, *Fatty Nitrogen Derived (FND) Amines Category High Production Volume (HPV) Chemicals Challenge*, American Chemistry Council, Washington, D.C.), if alkyl (C_{10} - C_{16}) dimethyl amine oxide is compared to the corresponding or similar alkyl amine it is seen that the toxicity drops by approximately 10-fold. The NOAEL for alkyl (C_{10} - C_{16}) dimethyl amine oxide in a chronic rat study is 42.3 mg/kg bw/day. The NOAEL in a 90-day rat study was the same. The urine was the primary pathway for elimination and excretion was largely complete in 24 hours (U. S. EPA. 1999. The Use of Structure-activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program. *http://www.epa.gov/chemrtk/sarfinl1.htm*.). In contrast the maternal toxicity NOAEL for Cis- 9-octadecenylamine was 10 mg/kg bw/day in rats and 3 mg/kg bw/day in rabbits. The NOAEL for octadecylamine in a 1-year oral gavage study in rats was 3 mg/kg bw/day. It is seen that the conversion of the amine to the amine oxide tends to reduce the repeat-dose toxicity by approximately 3 to 10-fold. In a similar manner the acute toxicity of the alkylamines are reduced from 4 to 20-fold by the introduction of hydroxyl groups into the molecule, and the toxicity of the alkyl amines is reduced approximately 5-fold as the molecular weight increases from C_2 to C_{16} and higher.

6. *Animal metabolism*. The aliphatic amines are well absorbed from the gut and respiratory tract. They are either excreted intact or in the form of metabolites, depending on the course of metabolism, which depends on their structure. Monamine oxidases are mitichondrial enzymes that catalyze the oxidation of many primary amines to the corresponding aldehyde and ammonia. The aldehydes are further oxidized to the corresponding carboxylic acid and the ammonia to urea. In addition microsomal enzymes can metabolize amines not readily

transformed by monoamine oxidases, through a variety of pathways. These include: deamination, methylation , N-dealkylation, N-oxidation, N-acetylation, cyclization, N-hydroxylation, and nitrosation.

7. *Metabolite toxicology*. Secondary amines are prone to react with nitrite, depending on the pH of the media, to form nitrosamines, some of which are potent animal carcinogens. Some studies have suggested the possibility of *in vivo* formation of carcinogenic nitrosamines within the acidic environment of the stomach following ingestion of secondary amines. The major human intake of nitrates (≈50 mg/day) comes from vegetables, water supplies, or additives in the meat and fish curing process (Ellen et al. 1990. *Food Additives Contaminants* 7(2) :207–221). Nitrates are converted to nitrites in the upper part of the gastrointestinal tract by nitroreductase bacteria normally present in the lower bowel.

Amines or amine precursors are present in vegetables, wine, spirits, beer, tea, fish, food flavoring agents, and some drugs. As indicated above, at least 10 mg of amine nitrogen is excreted per day; the intake of amines or their precursors is therefore probably in the 100 mg/day range. Thus there exists the required elements for the *in vivo* formation of carcinogenic nitrosamines from amine ingestion. Despite this theoretical possibility, epidemiologic studies have not provided evidence for a causal association between nitrite exposure and human cancer. Nor has a causal link been shown between N-nitroso compounds preformed in the diet or endogenously synthesized and the incidence of human cancer (Gangilli., S.D., 1999, ''Nitrate, nitrite and N-nitroso compounds'', In Ballintine, B., Marrs, T., and Turner, P., *General and Applied Toxicology*, Stockton Press, New York, p. 2111, 2143). It has been demonstrated in animals that nitrosation of diethylamine and dimethyamine *in vivo* is a very slow process. When these substances were fed to rats together with nitrite for over two years no tumors typical of treatment of rats with nitrosodiethylamine were observed Druckery et al, 1963 Cited by Benya et al., *Patty's*, 4th Ed. Vol II, Part B , page 1097). In any event, the addition to the diet of nanogram levels of amines from the proposed used of amine based surfactants is insignificant compared to normal endogenous levels and to those naturally occurring in food.

8. *Endocrine disruption*. There is no evidence to suggest that the alkyl amines have an effect on any endocrine system. In developmental and two-generation reproduction toxicity tests systemic toxicity was noted but no developmental or reproductive effects were found.

C. Aggregate Exposure

1. *Dietary exposure*. Exposure through both food and drinking water were estimated using data and methods more commonly applied to pesticide active ingredients. The methods for estimating dietary exposure are discussed above under residues. Drinking water exposures were estimated using EPA's combined Pesticide Root Zone Model/Exposure Assessment Modeling System (PRZM/EXAMS) and the 1 ha pond scenario.

i. *Food*. Both Tier 1 and Tier 2, acute and chronic dietary assessments were constructed in several different ways and in general margin of exposures (MOEs) >100 were found. Tier 1 acute assessments did yield MOEs <100, but the Tier 2 analysis gave an MOE = 1,500 for the lowest Tier 1 scenario.

ii. *Drinking water*. Using the average peak value from PRZM/EXAMS modeling for acute exposure, the average 60–day concentration for chronic exposure and the standard estimates of water consumption, acute and chronic margins of exposure for drinking water all MOEs were greater than 460. In using the model, maximum application rates and number of applications were assumed and the alkoxylated surfactants were assumed not to degrade in water or the environment. The modeling provides an extreme worst-case estimate of exposure in that the peak values simulated accumulation (i.e., no degradation) of the surfactants in water during a 30 years period of application.

2. *Non-dietary exposure*. For non-dietary exposure and risk analysis outdoor lawn care with broadcast application via hose-end sprayer was selected as the worst case. Dermal absorption was assumed to be 10%. Applicators were assumed to have dermal and inhalation exposures, while re-entry exposures were dermal and oral, the oral via hand-to-mouth activities by children. MOE's >100 were estimated by Tier 1 analyses, indicating reasonable certainty of no harm for the worst-case bounding scenario evaluated.

D. Cumulative Effects

Other alkoxylated amine compounds may be used in pesticide formulations. However, the assessment of this class of compounds assumes 100% of the pesticide products applied to crops will use one member of this class of alkoxylated amines. Therefore, the cumulative risk for this class of compound is covered by the assessments in this submission.

E. Safety Determination

1. *U.S. population*. As a general rule in any pesticide assessments, exposures of children are the highest of any subpopulation. This pattern was found to hold true for the alkoxylated surfactants and lead to simplifications in the assessment procedure. When exposures to children were found to be acceptable, e.g., acute and chronic Tier 2 estimated dietary exposures to children yielded large MOEs, separate estimates for other subpopulations were not deemed necessary. In the risk assessment we ultimately have adopted the dietary exposures for children for all subpopulations. Exposures for females 13–49 were calculated in certain instances and found to be comparable to each other and less than for children. Hence, exposure estimates for the latter were not formally completed. Rather the exposure numbers for females were assumed for the full U.S. population.

2. *Infants and children*. Except when using acute Tier 1 dietary exposure estimates and the most conservative toxicity endpoint, 3 mg/kg-bw/day, all MOEs were found to be comfortably greater than 100. Given the worst-case conservatism built into all the analyses, the results support a conclusion that Tomah[3]'s alkoxylated surfactants may be used safely in pesticide formulations without concerns for dietary and non-occupational exposures.

[FR Doc. 05–13978 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0180; FRL–7721–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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

DATES: Comments, identified by docket identification (ID) number OPP–2005–0180, must be received on or before August 19, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or

through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0180. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.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 on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the 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–2005–0180. 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–2005–0180. 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–2005–0180.

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–2005–0180. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

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

List of Subjects

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

Dated: June 30, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

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

Interregional Research Project Number 4

PP 3E6699, PP 3E6780, PP 3E6782, PP 3E6802, PP 3E6804, PP 4E6811

EPA has received pesticide petitions (PP 3E6699, PP 3E6780, PP 3E6782, PP 3E6802, PP 3E6804, and PP 4E6811) from Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.495 by establishing tolerances for residues of spinosad in or on the following raw agricultural commodities:

PP 3E6699 proposes to establish tolerances for banana and plantain at 0.25 parts per million (ppm).

PP 3E6780 proposes to establish tolerances for food commodities at 0.02 ppm.

PP 3E6782 proposes to establish tolerances for spearmint, tops at 5.0 ppm and peppermint, tops at 5.0 ppm.

PP 3E6802 proposes to establish tolerances for animal feed, nongrass, group 18, forage at 20 ppm; animal feed, nongrass, group 18 hay at 25 ppm; and peanut, hay at 25 ppm.

PP 3E6804 proposes to establish tolerances for vegetable, bulb, except green onion, group 3 at 0.1 ppm and onion, green at 2.0 ppm.

PP 4E6811 proposes to establish tolerances for:

- Grass, forage, fodder and hay, group 17, forage at 1.5 ppm.
- Grass, forage, fodder and hay, group 17, hay at 5 ppm.
- Corn, field, stover; corn, pop, stover; and corn, sweet, stover at 5.0 ppm.

- Corn, field, forage; corn, sweet, forage; and corn, pop, forage at 1.5 ppm.
- Teosinte, forage at 1.5 ppm.
- Millet, pearl, forage; and millet, proso, forage at 1.5 ppm.
- Millet, pearl, hay; millet, proso, hay; millet proso, straw at 5.0 ppm.
- Sorghum, forage, forage and sorghum, grain, forage at 1.5 ppm.
- Sorghum, forage, hay; and sorghum, grain, stover at 5.0 ppm.
- Wheat, forage at 1.5 ppm.
- Wheat, hay and wheat, straw at 5.0 ppm.
- Barley, straw and barley, hay at 5.0 ppm.
- Rye, forage at 1.5 ppm.
- Rye, straw at 5 ppm.
- Oat, forage at 1.5 ppm.
- Oat, hay and oat, straw at 5.0 ppm.
- Triticale, forage at 1.5 ppm.
- Triticale, hay and 5.0 ppm.

These petitions were prepared by Dow AgroSciences LLC, Indianapolis IN, 46268. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue of spinosad in plants is adequately understood for the purpose of these tolerances. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops.

2. *Analytical method*. There is a practical method (immunoassay) for detecting and measuring levels of spinosad in or on food with a limit of detection 0.005 ppm that allows monitoring of food with residues at or above the level set for these tolerances. The method had undergone successful EPA laboratory validation.

3. *Magnitude of residues*. Five field trials were conducted for bananas and showed residues of 0.02–0.20 ppm. Three field trials were conducted for mint and showed residues in mint tops of 0.25–3.25 ppm. No residue was found in mint oil. Three field trials were conducted for onions (representative for bulb vegetable, group 3). Residues were 1 ppm in onion, dry (bulb) and 2 ppm in green onion. A magnitude of residue study was conducted at 7 sites on grass. Residues were 1.4–6.9 ppm for forage and 0.57–4.2 ppm in hay. Residue data generated from this study were used in support of the proposed tolerances for group 17 (grass forage, fodder and hay) and group 16 (forage, fodder and straw of cereal grains). A magnitude of residue study was conducted at 5 sites each for alfalfa and clover. Residues were 1.8–20 ppm in alfalfa forage and 1.6–5.3 ppm in clover forage. In hay, residues were 0.7–24.8 ppm for alfalfa and 1.3–9.5 ppm for clover. Residue data generated from this study were used in support of the proposed tolerances for peanut hay and group 18 (non-grass animal feeds, forage, fodder, straw and hay).

B. Toxicological Profile

1. *Acute toxicity*. Spinosad has low acute toxicity. The rat oral LD_{50} is 3,738 milligrams/kilogram (mg/kg) for males and >5,000 mg/kg for females, whereas the mouse oral LD_{50} is >5,000 mg/kg. The rabbit dermal LD_{50} is >5,000 mg/kg and the rat inhalation LC_{50} is >5.18 mg/Liter (L) air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water-based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicty*. Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), and *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage in a teratology study (highest dose tested). This was not accompanied by either embryotoxicity, fetal toxicity, or teratogenicity. The no-observed-adverse-effect levels (NOAELs) for maternal and fetal toxicity in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day (highest dose tested). Maternal toxicity was not accompanied by either embryotoxicity, fetal toxicity, or teratogenicity. The NOAELs for maternal and fetal effects in rabbits were 10 and 50 mg/kg/day, respectively. In a two-generation reproduction study in rats, parental toxicity was observed in both males and females given 100 mg/kg/day (highest dose tested). Perinatal effects (decreased litter size and pup weight) at 100 mg/kg/day were attributed to maternal toxicity. The NOAEL for maternal and pup effects was 10 mg/kg/day.

4. *Subchronic toxicity*. Spinosad was evaluated in 13–week dietary studies and showed NOAELs of 4.9 mg/kg/day in dogs, 6 mg/kg/day in mice, and 8.6 mg/kg/day in rats. No dermal irritation or systemic toxicity occurred in a 21–day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.027 mg/kg/day for spinosad. The RfD has incorporated a 100-fold safety factor to the NOAELs found in the chronic dog study to account for interspecies and intra-species variation. The NOAELs in the chronic dog study were 2.68 and 2.72 mg/kg/day respectively, for male and female dogs. The NOAELs (systemic) shown in the rat chronic/carcinogenicity/neurotoxicity study were 9.5 and 12.0 mg/kg/day, respectively for male and female rats. Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month mouse feeding study and a 24–month rat feeding study at any dosages. The NOAELs in the mouse oncogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. A maximum tolerated dose was achieved at the top dosage level in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment was not performed. Spinosad did not cause neurotoxicity in rats in acute, subchronic, or chronic toxicity studies.

6. *Animal metabolism*. There were no major differences in the bioavailability, routes or rates of excretion or metabolism if spinosyn A and spinosyn D following oral administration in rates. Urine and fecal excretions were almost completed in 48–hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology*. The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

8. *Endocrine disruption*. There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* An acute dietary exposure was not performed because the Agency did not identify an acute dietary endpoint that was applicable to females (13+ years) or to the general U.S. population,

including infants and children. EPA has recently assessed the chronic dietary exposure to spinosad on existing crop uses and time-limited use on onions (**Federal Register** of August 6, 2003, (68 FR 46491) (FRL–7317–3). In conducting the chronic dietary assessment, EPA used the Dietary Exposure Evaluation Model-Trade Mark (DEEM™) software with the food commodity intake database which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The chronic dietary analysis represents a moderately refined estimate of dietary exposure using percent crop treated (PCT) estimates, anticipated residues for meat and milk, and default processing factors. EPA has concluded that exposure to spinosad from food will utilize 30% of the chronic population adjusted dose (cPAD) for the general U.S. population, 24% of the cPAD for females 13–49 years old, and 69% of the cPAD for children 1–2 years old, the sub-population at greatest exposure. When the calculated, anticipated residues from the new crop uses proposed in this notice are included in the risk assessment dietary exposure evaluation model food commodity intake data base (DEEM-FCID), the estimated exposure is increased by approximately 5% for the U.S. population, 4% for females 13–49 years old, and 19% for children 1–2 years old. Adverse effects are not expected for exposures utilizing less than 100% of the RfD, therefore, chronic dietary exposure and risk for the general U.S. population and children are well within the acceptable levels.

ii. *Drinking water*. Since the Agency lacks sufficient monitoring data to complete a comprehensive exposure and risk for spinosad in drinking water, drinking water concentration estimates are made on simulation taking into account data on the physical characteristics of spinosad.

Guidance from EPA has indicated that Tier 1 screening level models, such as the generic expected environmental concentration (GENEEC) and the screening concentration in ground water (SCI-GROW), maybe used to estimate upper-bound pesticide residues in surface water and ground water when assessing potential exposure through drinking water. Estimated environmental concentrations (EEC) of pesticide in surface water or ground water are then compared to a drinking water level of comparison (DWLOC). DWLOC is not a regulatory standard for drinking water but a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. DWLOC determines how much of the acceptable exposure (PAD) is available for exposure through drinking water. In calculating DWLOC, default values for body weights and water consumption were used: 2L/70 kg adult male, 2L/60 kg adult female, and 1L/10 kg child.

In a recent assessment, published in the August 6, 2003 **Federal Register**, EPA used the first index reservoir screening tool (FIRST) and SCI-GROW models to estimate the EECs of spinosad in surface water and ground water. The EECs for chronic exposures are estimated to be 2.3 parts per billion (ppb) in surface water and 0.037 ppb in ground water.

As shown in the table in this unit, the EECs in surface water and ground water are substantially below the chronic DWLOC, therefore, aggregate chronic exposure is not expected to exceed 100% of the cPAD.

Population Subgroup	cPAD milligrams/ kilogram/day (mg/ kg/day)	%cPAD	Surface Water parts per billion (ppb)	Ground Water ppb	DWLOC ppb
U.S. population	0.027	35	2.3	0.037	615
Children 1–2 years old	0.027	88	2.3	0.037	35
Females 13–49 years old	0.027	28	2.3	0.037	615

2. *Non-dietary exposure*. Spinosad is also currently registered for outdoor use on turf and ornamentals at low rates of application 0.04–0.54 lb active ingredient/Acre (a.i./A) that could result in short-term residential exposure. Intermediate-term residential exposure is considered negligible because residues on turf after 30 days were insignificant. Since dermal post-application exposure is not of concern (no identified toxicological end-point), only hand-to-mouth, object-to-mouth, and incidental ingestion of soil exposures for turf and ornamental uses were considered for exposure. The Agency has developed exposure formulas and estimated doses to theoretically assess residential incidental oral exposure. The resulting incidental oral ingestion margin of exposures (MOEs) from the residential use of spinosad calculated by the Agency are all below EPA's level of concern. The combined incidental oral MOE is 640, as published in the August 6, 2003 **Federal Register**.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the gamma aminobatopic acid (GABA) receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment. Spinosad is classified in a mechanism-of-action group of its own for the purpose of resistance management in insects and for rotation with other crop protection products.

E. Safety Determination

1. *U.S. population*. Chronic dietary exposures for the general U.S. population and females (13–49 years old) to residues of spinosad from the new uses proposed in this notice were estimated to increase the recent EPA risk estimate (see the August 6, 2003 **Federal Register** by approximately 5% of the cPAD. After calculating the chronic DWLOCs and comparing them to the EECs for surface water and

ground water, the aggregate exposure is not expected to exceed 100% of the cPAD. Additionally, all MOEs for short-term risk are below the level of concern. Thus, based on the completeness and reliability of the toxicity data and the moderately refined exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to the U.S. population from short-term or chronic aggregate exposures to spinosad residues from current and proposed uses.

2. *Infants and children*. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for spinosad relative to prenatal and postnatal effects for children is complete. Furthermore, the NOAELs in the dog chronic feeding study which were used to calculate the RfD of 0.027 mg/kg/day are already lower than the NOAELs from the developmental studies in rats and rabbits by a factor of more than 10–fold. In the reproductive study in rats, the pup effects shown at the highest dose tested were attributed to the maternal toxicity. Also, no neurotoxic signs have been observed in any of the standard required studies conducted. Therefore, it is concluded that there is no indication of increased sensitivity of infants and children relative to adults and that an additional Food Quality Protection Act (FQPA) safety factor is not required.

Chronic dietary exposure to residues of spinosad from the new uses proposed in this notice was estimated to increase the EPA risk estimate by approximately 19% for children 1–2 years old, the population subgroup predicted to be most highly exposed. After calculating the chronic DWLOCs and comparing them to the EECs for surface water and ground water, the aggregate exposure is not expected to exceed 100% of the cPAD.

Thus, based on the completeness and reliability of the toxicity data and the moderately refined exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from short-term and chronic aggregate exposures to spinosad residues from current and proposed uses.

F. International Tolerances

In 2003, Codex Alimentarius Commission adopted 29 new maximum residue levels (MRLs) for spinosad and included cotton, almonds, corn, and several fruits and vegetables, as well as animal commodities.

[FR Doc. 05–13977 Filed 7–19–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 5, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington DC 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0717.

OMB Approval date: 6/28/2005.

Expiration Date: 6/30/2008.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR 64.703(a), 64.709, and 64.710.

Form No.: N/A.

Estimated Annual Burden: 54,375,330 responses; 30 seconds to 50 hours average per response; 477,185 hours.

Total Annual Cost: $216,150.

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.709 codifies the requirements for OSP's to file informational tariffs with the Commission. 47 CFR 64.710, among other things, requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–13862 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved By the Office of Management and Budget

July 11, 2005.

SUMMARY: The Federal Communications Commissions (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995). An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number.

FOR FURTHER INFORMATION CONTACT: For additional information or questions concerning the OMB control number and expiration date should be directed to Evan Baranoff, Kenneth Lewis or Eloise Gore, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2120 or via the Internet to *Evan.Baranoff@fcc.gov, Kenneth.Lewis@fcc.gov* or *Eloise.Gore@fcc.gov.*

OMB Control Number: 3060–0311.

OMB Approval Date: 5/25/05.

OMB Expiration Date: 5/31/08.

Title: 47 CFR 76.54, Significantly Viewed Signals; Method to be followed for Special Showings.

Form Number: Not applicable.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Estimated Time Per Response: 1–15 hours.

Total Annual Burden: 20,610 hours.

Total Annual Costs: $200,000.

Needs and Uses: 47 CFR 76.54(b) provides for cable operators and broadcast stations seeking cable carriage of ''significantly viewed'' signals to use the Section 76.7 petition process to demonstrate ''significantly viewed'' status on a community basis by independent professional audience surveys. The proposed rule changes, if adopted, would require satellite carriers or broadcast stations seeking satellite carriage of ''significantly viewed'' signals to use the same petition process now in place for cable operators, as required by 47 CFR sections 76.5, 76.7 and 76.54 of the FCC's rules.

47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast

stations, about independent professional audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections. The proposed § 76.54(c) retains the existing notification requirement, but, if adopted, would increase the potential number of parties that would file such notifications.

47 CFR 76.54(d) provides for cable operators and broadcast stations seeking cable carriage of ''significantly viewed'' signals to use the Section 76.7 petition process to demonstrate ''significantly viewed'' status on. The proposed rule changes if adopted, would expand use of the Section 76.7 petition process to include petitions filed by satellite carriers or broadcast stations seeking satellite carriage of ''significantly viewed'' signals.

47 CFR 76.54(e) and (f) are proposed additions to the rule. If adopted, these rules would be used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

OMB Control Number: 3060–0888.

OMB Approval Date: 5/25/05.

OMB Expiration Date: 5/31/08.

Title: Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section, 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Estimated Time Per Response: 4—60 hours.

Total Annual Burden: 16,000 hours.

Total Annual Costs: $200,000.

Needs and Uses: 47 CFR 76.7 is used to make determinations on petitions and complaints filed with the Commission. The rule is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures. The proposed rule changes would expand use of the Section 76.7 petition process to include the filing of complaints under the Section 340 of the Act enforcement provisions. Thus, if adopted, the proposed rule changes would expand the potential number of parties and situations that may require the filing of § 76.7 petitions.

OMB Control Number: 3060–0960.

OMB Approval Date: 5/25/05.

OMB Expiration Date: 5/31/08.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules; 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection; 47 CFR 76.127, Satellite Sports Blackout Rules.

Form Number: Not applicable.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,428.

Estimated Time Per Response: 0.5–1 hour.

Total Annual Burden: 12,402 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.122, 76.123, 76.124 and 76.127 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network, syndicated, and sports programming in the broadcasters' recognized market areas. The proposed rule changes to §§ 76.122 and 76.123, if adopted, would implement statutory requirements to provide new rights for in-market stations to assert nonduplication and exclusivity rights, potentially increasing the number of filings pursuant to these rules. No changes to §§ 76.124 and 76.127 are proposed.

OMB Control Number: 3060–0980.

OMB Approval Date: 6/14/05.

OMB Expiration Date: 6/30/08.

Title: SHVERA Rules; Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (Broadcast Signal Carriage Issues, Retransmission Consent Issues).

Form Number: Not applicable.

Respondents: Business or other for-profit entities.

Number of Respondents: 7,179.

Estimated Time Per Response: 1–5 hours.

Total Annual Costs: $30,000.

Needs and Uses: On April 29, 2005, the Commission adopted a Notice of Proposed Rule Making (NPRM), *In the Matter of the Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act,* MB Docket No. 05–181, FCC 05–92. The NPRM proposed amendments to 47 CFR 76.66 to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). Section 210 of the SHVERA amends section 338(a) of the Communications Act of 1934, as amended, (''Communications Act'' or ''Act''). Section 338 governs the carriage of local television broadcast stations by satellite carriers. In general, the SHVERA amends this section to require satellite carriers to carry both the analog and digital signals of television broadcast stations in local markets in noncontiguous States (including Alaska and Hawaii), and to provide these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals.

On March 28, 2005, the Commission adopted an Order, FCC 05–81, Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''), Procedural Rules, to implement procedural rules as required by the SHVERA. The SHVERA is the third statute that addresses satellite carriage of television broadcast stations. The 2004 SHVERA gives satellite carriers the additional option to carry Commission-determined ''significantly viewed'' out-of-market signals to subscribers. The SHVERA requires the Commission to undertake several proceedings to implement new rules, revise existing rules, and conduct studies. The Procedural Rules Order to implement sections 202, 205, and 209 of the SHVERA is one of a number of Commission proceedings that will be required to implement the SHVERA.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14176 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 12, 2005.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 19, 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 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* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning this information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*. If you would like to obtain or view a copy of this new information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 74.786, Digital Channel Assignments; Section 74.787, Digital Licensing; Section 74.790, Permissible Service of Digital TV Translator and Low Power TV (LPTV) Stations; Section 74.794, Digital Emissions, and Section 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 8,433.

Estimated Time per Response: 30 minutes—4 hours.

Frequency of Response: Recordkeeping requirement; One-time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 55,417 hours.

Total Annual Cost: $95,734,200.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted rules in a *Report and Order (R&O)* in MB Docket No. 03–185, FCC 04–220, adopted September 9, 2004, and released September 30, 2004. This document established rules and policies for digital low power television (LPTV) and television translator (TV Translator) stations and modifies certain rules applicable to digital Class A TV stations (Class A). The Commission also imposes Paperwork Reduction Act (PRA) burdens aimed at minimizing the opportunity for interference and continuing to offer the public the highest quality viewing services possible during the transition to digital television.

Section 74.786 requires an applicant for a new low power television translator digital station or for changes in the facilities of an authorized digital station shall endeavor to select a channel on which its operation is not likely to cause interference. The applications must be specific with regard to the channel requested. Only one channel will be assigned to each station. Stations proposed use of such channels shall notify all potentially affected 700 MHz wireless licensees not later than 30 days prior to the submission of their application.

Section 74.787 provides that mutually exclusive LPTV, TV translator, mutually exclusive, and mutually exclusive displacement relief applicants applying for construction permits for digital stations will be afforded that opportunity to submit in writing to the Commission, settlements and engineering solutions to resolve their situation.

Section 74.790 states that digital LPTV stations and TV translator station shall not retransmit the programs and signal of any TV broadcast or DVT broadcast station(s) without prior written consent of such stations(s).

Section 74.794 requires licensees of digital LPTV and translator stations to retain with their station license a description of the low pass filter or equivalent device with the manufacture's rating or a report of measurements by a qualified individual.

Section 74.796 digital LPTV or TV translator station licensees to notify the Commission upon the completion of the transmitter modifications and shall certify compliance with all applicable transmission system requirements and results of performance tests.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14177 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 11, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 19, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this new or revised information collection, you may

do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations.

Form No.: FCC Form 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,001.

Estimated Time Per Response: 1–80 hours.

Frequency of Response: On occasion and annual reporting requirements and third party disclosure requirement.

Total Annual Burden: 41,279 hours.

Total Annual Cost: $531,875,000.

Privacy Act Impact Assessment: No.

Needs and Uses: The Commission adopted and released a Fifth Report and Order in IB Docket No. 00–248, and a Third Report and Order in CC Docket No. 86–496, FCC 05–63, which adopted new information collection requirements. The Commission has adopted six new rule sections which impose reporting and third party certifications which are subject to the Paperwork Reduction Act. They are: (1) Section 25.220(c)(1) requires that non-routine earth station license applicants may obtain certifications from target satellite operators showing that the non-routine earth station has been coordinated with potentially affected satellite operators; (2) Section 25.220(c)(2) requires non-routine earth station applicants may demonstrate in their applications that will reduce their power levels sufficiently to compensate for their small-than-routine earth station antennas; (3) Section 25.132(b)(3) requires submission of antenna gain patterns required of all non-routine earth station applicants proposing smaller-than-routine antennas; (4) Section 25.220(e) requires operators of satellite communicating with non-routine earth station (''target'' satellite) to coordinate with non-routine power levels with operators of potentially affected satellites within six degrees and to certify that coordination has been completed; (5) Section 25.130(a) requires licensees to provide language for the Commission to place in the public notice. (In addition, applicants not required to submit applications on FCC Form 312EZ, other than ESV applicants, must submit the following information to be used as an ''informative'' in the public notice issued under Section 25.151 as an attachment to their application: (a) A detailed description of the service to be provided, including frequency band and satellites to be used. The applicant must identify either the specific satellite(s) with which it plans to operate, or the eastern or western boundaries of the arc it plans to coordinate; (b) the diameter or equivalent of the antenna; (c) proposed power and power density levels; (d) identification of any random access technique, if applicable; and (e) identification of a specific rule or rules for which a waiver is requested); and (6) licensees must provide information on half-power beam width if they plan to operate in a band that is shared with government users.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14268 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–62–B (Auction No. 62); DA 05–1598]

Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast Construction Permits. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 62 is scheduled to begin on November 1, 2005.

FOR FURTHER INFORMATION CONTACT: Auctions and Spectrum Access Division, Wireless Telecommunications Bureau: For legal questions: Howard Davenport at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2888: Media Contact: Lauren Patrich at (202) 418–7944. Media Bureau, Audio Division: For service rule questions: Lisa Scanlan at (202) 418–2700. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 62 Procedures Public Notice,* released on June 17, 2005. The complete text of the *Auction No. 62 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 62 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* The *Auction No. 62 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/62/.*

I. General Information

A. Introduction

1. The Media Bureau and Wireless Telecommunications Bureau (collectively the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled for November 1, 2005. On April 14, 2005, in accordance with the § 309(j)(3) of the Communications Act of 1934, as amended, the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 62. The Bureaus received 15 comments, one reply comment and one supplement to the reply comment in response to the *Auction No. 62 Comment Public Notice* 70 FR 21782, April 27, 2005.

i. Construction Permits To Be Auctioned

2. Auction No. 62 will offer 172 construction permits in the FM broadcast service for stations throughout the United States and the U.S. Virgin Islands. The construction permits to be auctioned include 172 new FM allotments, including 30 FM construction permits that were offered,

but not sold, in Auction No. 37. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments, pursuant to the Commission's established rulemaking procedures, designated for use in the indicated communities. Please note that the number assigned to each construction permit has been revised from those that were included in the *Auction No. 62 Comment Public Notice*. The updated construction permit numbers are listed in Attachment A of the *Auction No. 62 Procedures Public Notice*.

3. Two commenters requested that specific additional FM channels be added to the list of FM allotments to be auctioned in Auction No. 62. In the interest of an effective and efficient auction process, the Bureaus decline to enlarge the Auction No. 62 inventory by adding additional FM allotments at this time. The specific vacant FM allotments at issue will however, be included in a subsequent FM auction. Two commenters ask that specific FM allotments be removed from the Auction No. 62 inventory, asserting that existing stations provide sufficient service and concluding that the communities at issue cannot support additional stations based on declining populations. The commenters requested that FM 169 and FM 170, Wheatland, WY, be removed, and that FM 110, Farmington, PA, and FM 112, Strattonville, PA, be removed. The Bureaus will not remove the four FM allotments from the auction inventory, in light of the expressions of interest filed in the respective rulemaking proceedings to amend the FM Table of Allotments. Simply removing the allotments from this auction does not delete the FM channel from the Table of Allotments. Rather, an entity must submit a petition for rulemaking to delete an allotment from the FM Table of Allotments. Finally, because the winning bidder for the Mason, Texas FM allotment in Auction No. 37 defaulted on its high bid, a commenter contends that as second highest bidder, it should be permitted the opportunity to purchase the FM construction permit at the net bid amount before the permit is included in another auction. The commenter's request is being considered separately along with other similar requests by unsuccessful bidders in Auction No. 37.

4. Pursuant to the policies established in the *Broadcast First Report and Order*, 63 FR 48615, September 11, 1998, applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction No. 62 Procedures Public Notice*; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. Attachment A of the *Auction No. 62 Procedures Public Notice* also lists the reference coordinates for each vacant FM allotment. When two or more short-form applications (FCC Form 175) for an FM allotment are accepted for filing, mutual exclusivity (MX) exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201–73.333, 73.1001–73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in Title 47, Part 1, Subpart Q, and Part 73, Subpart I of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this public notice, the *Auction No. 62 Comment Public Notice* and the *Broadcast First Report and Order*, the *Broadcast First Reconsideration Order*, 64 FR 24523, May 7, 1999, and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856, August 18, 1999, and the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003.

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's Part 1 rules prohibit applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect or, in their reasonable assessment, have the potential to affect bids or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. The geographic license area is the market designation of the particular service. For the FM service, the market designation is the particular vacant FM allotment (*e.g.*, Wasilla, Alaska, Channel 265C2, Market FM001). In Auction No. 62, for example, the rule would apply to applicants bidding for any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the FCC Form 175 short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either is eligible to bid on. For purposes of this prohibition, § 1.2105(c)(7)(i) defines *applicant* as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

8. Bidders competing for construction permits for any of the same designated markets must not communicate indirectly about bids or bidding strategy. Accordingly, such bidders are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different

individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could likewise occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

9. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits in the same designated market. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same designated market. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with §§ 1.2105(c) and 73.5002.

10. Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

11. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.

12. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E of the *Auction No. 62 Procedures Public Notice*.

iii. Due Diligence

13. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission permittee in the broadcast service, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

14. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. Reports and orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

15. Potential bidders are also strongly encouraged to conduct their own research prior to Auction No. 62 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 62 are strongly encouraged to continue such research throughout the auction.

16. Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent permittees or the construction permits available in Auction No. 62. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or the construction permits available in Auction No. 62. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

17. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. The Bureaus note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 62. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

18. Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 62.

19. Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb/.*

20. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

21. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations.

22. Two commenters suggest reducing the risk attendant to bidding, and advocate that no FM allotment be offered at auction if that allotment is subject to an on-going rulemaking proceeding, remains under reconsideration, or still requires foreign concurrence. International coordination has been completed for all Auction No. 62 FM allotments listed in Attachment A of the *Auction No. 62 Procedures Public Notice.* Furthermore, concurrence data including approval dates are now available in CDBS regarding Canadian and Mexican approvals. With regard to allotment FM160, Meeteetse, WY, Channel 273C, the Bureaus agrees with the commenter that the FM channel was inadvertently allotted and will remove it from the Auction No. 62 inventory.

23. The Bureaus decline, however, to remove any additional allotments from the auction based on the pendency of a rulemaking proceeding which may or may not ultimately affect the FM allotment at issue. All rulemaking proposals and counterproposals regarding FM allotments are entered into the Commission's CDBS system, thus giving notice of the proponent's specific technical proposal. To the extent the allotment proceeding is docketed, the release of a notice of proposed rulemaking or report and order provides further information about the specific technical proposal at hand. As is customary in broadcast auctions, to avoid conflicts with auction proposals and promote a more certain and speedy auction process, the Media Bureau will be releasing its public notice announcing an FM minor change application and petition for rulemaking freeze simultaneously with the *Auction No. 62 Procedures Public Notice.* The Bureaus caution bidders to exercise due diligence in researching whether prior or pending allotment proceedings could affect their bids. To proceed as the commenter suggests could potentially encourage the filing of frivolous petitions for rulemaking for the sole purpose of preventing an allotment from proceeding to auction. Furthermore, the commenter provides no evidence indicating that any of the winning bidders in Auction No. 37 were adversely affected by an ongoing rulemaking proceeding, or that any of the Auction No. 37 allotments were sold at substandard amounts due to a then-ongoing rulemaking proceeding. In fact, the commenter raised similar objections in Auction No. 37, requesting that 39 allotments be deleted from that auction. Of those 39 allotments, 35 were won at auction for a total of over $22.8 million dollars (net), and 15 of those construction permits have already been granted. The Bureaus find that proceeding with the auction with the current allotment inventory provides an appropriate balance between the prompt initiation of FM service to those allotment communities and the provision of certainty to auction participants.

iv. Bidder Alerts

24. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission permittee in the broadcast service, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular services, technologies or products, nor does a Commission construction permit constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

25. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 62 to deceive and defraud unsuspecting investors. Information about deceptive telemarking schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040.

v. National Environmental Policy Act Requirements

26. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a Federal action and the permittee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

27. Bidding in Auction No. 62 will begin on Tuesday, November 1, 2005, as announced in the *Auction No. 62 Comment Public Notice.* The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

28. Auction No. 62—FM Broadcast.

iii. Bidding Methodology

29. The bidding methodology for Auction No. 62 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC's Integrated Spectrum Auction System (ISAS or FCC Auction System), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

iv. Pre-Auction Dates and Deadlines

Auction Seminar	July 27, 2005.
Short-Form Application (FCC Form 175) Window Opens	July 27, 2005; 12 p.m. ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	August 12, 2005; 6 p.m. ET.
Upfront Payments (via wire transfer)	September 30, 2005; 6 p.m. ET.
Mock Auction	October 28, 2005.
Auction Begins	November 1, 2005.

v. Requirements for Participation

30. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. Eastern Time (ET), August 12, 2005.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, September 30, 2005.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

vi. Proposals To Restrict Participation

31. Two commenters suggest that the Bureaus establish restrictions on which entities are eligible to participate in Auction No. 62. The Bureaus will not impose any eligibility restrictions on bidders in Auction No. 62. Barring certain entities from participating in an auction based on the number of facilities they currently own would constitute a *de facto* amendment of the Commission's rules. In those cases where they are used, rules concerning eligibility to participate in an auction or hold a license are established in service specific rules adopted by the Commission. Requests made in comments filed to change the eligibility rules are beyond the scope of a public notice regarding the procedures for an auction. Such an issue should have been raised in the context of a rulemaking proceeding concerning service rules for the FM broadcast service. For this reason, the Bureaus also decline to base auction participation on the numerical limits of the broadcast multiple ownership rules, as the commenter suggests.

General Auction Information: General Auction Questions, Seminar Registration.	FCC Auctions Hotline (888) 225–5322, option two; or (717) 338–2888. Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday.
Auction Legal Information: Auction Rules, Policies, Regulations.	Auctions and Spectrum Access Division (202) 418–0660.
Licensing Information: Rules, Policies, Regulations Licensing Issues, Engineering Issues, Due Diligence, Incumbency Issues.	Audio Division (202) 418–2700
Technical Support: Electronic Filing FCC Auction System	FCC Auctions Technical Support Hotline (877) 480–3201, option nine; or (202) 414–1250, (202) 414–1255 (TTY). Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday.
Payment Information: Wire Transfers, Refunds	FCC Auctions Accounting Branch (202) 418–0578, (202) 418–2843 (Fax).
Telephonic Bidding	Will be furnished only to qualified bidders.
FCC Copy Contractor: Additional Copies of Commission Documents.	Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, *http://www.bcpiweb.com.*
Press Information	Lauren Patrich (202) 418–7944.
FCC Forms	(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington area), *http://www.fcc.gov/formpage.html.*
FCC Internet Sites	*http://www.fcc.gov, http://wireless.fcc.gov/auctions, http://wireless.fcc.gov/uls.*

II. Short-Form (FCC FORM 175) Filing Requirements

32. A party's application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. For Auction No. 62, if an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants to participate in Auction No. 62 must file FCC Form 175 electronically prior to 6 p.m. ET on August 12, 2005, following the procedures set forth in Attachment C of the *Auction No. 62 Procedures Public Notice.* Applicants bear full responsibility for submission of timely and complete FCC Form 175 applications. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C to the *Auction No. 62 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their FCC Form 175 applications.

33. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple FCC Forms 175, such additional applications will be dismissed. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. New Entrant Bidding Credit

34. To fulfill its obligations under § 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

i. Eligibility

35. The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline—August 12, 2005. Thus, the bidder's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—August 12, 2005. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the

bidding credit, and must be reported immediately.

36. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- All officers and directors of a corporate bidder;
- Any owner of 5 percent or more of the voting stock of a corporate bidder;
- All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- All members of a limited liability company, unless sufficiently insulated.

37. In cases where a bidder's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Bidders should note that the mass media attribution rules were recently revised.

38. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order,* the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the bidder, even if such an interest is non-voting.

39. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in § 73.5008(b).

B. Application Requirements

40. In addition to the ownership information required pursuant to § 1.2112, applicants are required to establish on their FCC Form 175 applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's FCC Form 175. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

41. Applicants that qualify for the New Entrant Bidding Credit, as set forth in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

42. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

43. Several commenters request that the Bureaus revise the new entrant bidding credits available for Auction No. 62. The Bureaus are unable to adopt for Auction No. 62 the various suggestions by commenters to revise the criteria for and the amount of the new entrant bidding credit and to adopt new bidding credits based on other criteria. Implementation of these proposals would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a Commission rulemaking proceeding. The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes. Such rule changes should have been raised in the context of the rulemaking proceeding establishing bidding credits for the FM broadcast service. With respect to one commenter's suggestion of an ''original petitioner bidding credit,'' the Commission previously addressed and rejected the idea of awarding a credit to an FM applicant that successfully petitioned for the FM allotment of the channel being auctioned in the *Broadcast First Report and Order.*

44. One commenter's proposal sought to address constitutionally permissible measures to increase minority and female ownership of radio and television stations. The Bureaus believe that these proposals are more appropriately addressed in a separate proceeding rather than in response to a public notice seeking comment on the forthcoming auction of FM broadcast allotments. Accordingly, the Bureaus will incorporate these proposals into the record of the Commission's § 257 proceeding.

C. Permit Selection

45. In Auction No. 62, applicants must select the construction permits on which they want to bid from the eligible permits list. In Auction No. 62, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available construction permits to create customized lists of construction permits. The applicant will make selections for one or more of the filter criteria and the system will produce a list of construction permits satisfying the specified criteria. In the FCC Form 175 for certain previous non-broadcast auctions, applicants could use

a *Select All* function to indicate that they wanted to pursue all markets being auctioned. One commenter states that the bidding strategy of identifying all available channels so that competitors are unable to determine which allotments ''are really of interest'' has the potential of discouraging truly new entrant applicants from bidding in the auction ''if they believe there are hundreds of bidders for the allotment they seek.'' Enhancements to the FCC Auction System make it easy for applicants to select multiple construction permits with or without a *Select All* function. The ability for applicants to select and bid on multiple construction permits can improve bidders' ability to pursue backup bidding strategies during the auction. Based upon the Bureau's experience in past auctions, the Bureaus adopt its proposal.

46. There is no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that an applicant confirm its construction permit selection because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its FCC Form 175.

D. Consortia and Joint Bidding Arrangements

47. Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. Applicants will also be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants for the same market after the deadline.

48. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

E. Ownership Disclosure Requirements

49. The Commission indicated in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply. Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short form are set forth in § 1.2112 of the Commission's rules. Applicants are responsible for information submitted in FCC Form 175 being complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing FCC Form 175. Applicants can update any information that needs to be changed directly in the FCC Form 175.

50. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, such as information submitted in an on-line FCC Form 602 in connection with wireless services, will automatically be entered into FCC Form 175.

F. Provisions Regarding Former and Current Defaulters

51. Each applicant must state under penalty of perjury on its FCC Form 175 application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its FCC Form 175 application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

52. Former defaulters—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 62, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. One commenter, although agreeing with the defaulter and former defaulter certification requirement, suggests as an alternative that if a former defaulter has cured outstanding infractions and has not been delinquent on any non-tax debt owed to any Federal agency for at least a decade, it should only be required to pay the standard upfront payment. The Bureaus cannot adopt this proposal. Implementation of this suggestion would require amendment of § 1.2106(a) of the Commission's rules, which can only be accomplished through a Commission rulemaking proceeding.

53. Current defaulters—*i.e.*, applicants, including their attributable interest holders, that are in default on any payment for Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency—are not eligible to bid in Auction No. 62.

54. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the

Bureau's short-form application process. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an applicant's ability to comply with the default and delinquency disclosure requirements.

G. Installment Payments

55. One commenter suggests the Bureau allow small businesses to pay for their licenses by making installment payments throughout the eight-year license period. In the *Part 1 Third Report and Order*, 65 FR 52401, August 29, 2000, the Commission suspended use of installment payments for the foreseeable future. Accordingly, installment payment plans will not be available in Auction No. 62.

H. Other Information

56. Applicants owned by minorities or women, as defined in § 1.2110(c)(2), may identify themselves in filling out their FCC Form 175 short-form application regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

I. Minor Modifications to Short-Form Applications (FCC Form 175)

57. After the short-form filing deadline (6 p.m. ET August 12, 2005), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as noncommercial educational). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and addresses and phone numbers of the applicants and their contact persons. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. In addition, applicants should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction62@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 62 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

J. Maintaining Current Information in Short-Form Applications (FCC Form 175)

58. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit should be reported immediately. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar—July 27, 2005

59. On Wednesday, July 27, 2005, the FCC will sponsor a seminar for parties interested in participating in Auction No. 62 at the Federal Communications Commission headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

60. To register, complete the registration form Attachment B of the *Auctions No. 62 Procedures Public Notice* and submit it by Monday, July 25, 2005. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

61. For individuals who are unable to attend, an Audio/Video of this seminar will be available via webcast from the FCC's Auction 62 Web page at *http://wireless.fcc.gov/auctions/62/.*

B. Short-Form Application (FCC Form 175)—Due by August 12, 2005, 6 p.m. ET

62. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission prior to 6 p.m. ET on August 12, 2005. Late applications will not be accepted. There is no application fee required when filing FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

63. Applications may generally be filed at any time beginning at noon ET on July 27, 2005, until 6 p.m. ET on August 12, 2005. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 12, 2005.

64. Applicants must always click on the SUBMIT button on the Certify and Submit screen of the electronic form to successfully submit their FCC Form 175s or modifications. Any form that is not submitted will not be reviewed by the FCC.

C. Application Processing and Minor Corrections

65. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting such corrected applications.

66. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. In the NCE Second Report and Order, the Commission held that applications for NCE FM stations on non-reserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction No. 62 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.

67. As described more fully in the Commission's rules, after the August 12, 2005, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as NCE).

D. Upfront Payments—Due September 30, 2005

68. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank by 6 p.m. ET on September 30, 2005.

i. Making Auction Payments by Wire Transfer

69. Wire transfer payments must be received by 6 p.m. ET on September 30, 2005. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

70. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write Wire Transfer—Auction Payment for Auction No. 62. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. FCC Form 159

71. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 62 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

72. In the *Part 1 Order*, 62 FR 13540, March 21, 1997, the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323, August 29, 2000, the Commission ordered that former defaulters, *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to make upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules.

73. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on FCC Form 175, but rather to cover the number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

74. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum. One commenter suggests having no minimum opening bid amount or reserve price. The same commenter alternatively suggests limiting upfront payments to no more than $50,000 for any allotment, and to $5,000 for allotments for the first local transmission services to communities with populations under 10,000. The commenter suggests that lower upfront payment amounts will increase bidder participation and ensure that smaller populations will receive service. However, the Bureaus' auction experience has shown no such correlation between the amount of the upfront payment and bidder interest. Moreover, the Bureaus' method of setting upfront payments is designed to ensure that permits will be awarded to the parties that value them most, rather than encouraging speculation by potentially discounting prices. The Bureaus thus decline to adopt the commenter's proposal. The specific upfront payment and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 62 Procedures Public Notice.*

75. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Channel/class	Location	Bidding units	Upfront payment
FM362	232C3	Viola, AR	50,000	50,000

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY—Continued

Market No.	Channel/class	Location	Bidding units	Upfront payment
FM015	279C3	Flagstaff, AZ	70,000	70,000

76. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits applied for on its FCC Form 175, the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

77. The Commission will use wire transfers for all Auction No. 62 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed in the *Auction No. 62 Procedures Public Notice* be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418–2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578.

E. Auction Registration

78. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

79. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards that will be required to place bids (or access the FCC Auction System) and the telephonic bidding phone number. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, October 27, 2005, should call (717) 338–2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

80. Qualified bidders should note that lost SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

81. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 62.

82. Please note that the SecurID cards can be recycled, and the Bureaus encourage bidders to return the cards to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction—October 28, 2005

83. All qualified bidders will be eligible to participate in a mock auction on Friday, October 28, 2005. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

84. The first round of bidding for Auction No. 62 will begin on Tuesday, November 1, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

85. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to award all construction permits in Auction No. 62 in a simultaneous multiple round auction. In a simultaneous multiple round auction, all construction permits are available during the entire auction, and bids are accepted on any construction permit until the auction concludes. Two commenters found the structure unfair to new entrant bidders. One commenter argued that keeping the bidding open on all permits forces the continued monitoring of all permits after each round of bidding and therefore unduly increases the administrative costs for these smaller applicants. Both commenters suggest that after a designated number of consecutive rounds ensue without additional activity, the auction for that particular FM channel should be declared closed and the permit awarded to the provisionally winning bidder. Through its experience with auctions, the Commission has found that the simultaneous multiple round bidding design best advances the goals of competitive bidding. This auction

design generates the most information about relative prices during the course of the auction and provides bidders with the greatest flexibility to pursue back-up strategies. Furthermore, in addition to the informational and bidding flexibility advantages, simultaneous multiple round auctions engender vigorous competition and are more likely to place construction permits in the hands of the bidder with the highest valuation. The Bureaus therefore conclude that it is operationally feasible and appropriate to auction the FM broadcast stations construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

ii. Eligibility and Activity Rules

86. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. The Bureaus received no comments on this issue.

87. For Auction No. 62 the Bureaus adopts this proposal. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 62 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

88. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

89. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureaus adopt them for Auction No. 62.

iii. Auction Stages

90. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to conduct the auction in two stages and employ an activity rule. The Bureaus further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Finally, the Bureaus proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

91. Two commenters, opposed the introduction of staged bidding, which they believe will confuse bidders and, in one's view, advantage larger bidders who ''can hire a math strategy expert'' to determine optimal bids. Both commenters favor retention of a 100 percent activity requirement. The Bureaus disagree. If anything, the 100 percent bidding requirement is more difficult, as it forces bidders to assemble groups of bids—often in a short time—that taken together equal exactly the number of bidding units the bidders possess. Under the Bureau's proposal, a bidder's Stage One bids and provisionally winning bids need only total three-quarters or more of the bidder's eligibility—a level that is neither difficult to calculate nor to implement. Bidders do not need to calculate their required activity; the FCC Auction System clearly displays for a bidder whether its bids meet the activity requirement. Moreover, even though the 95 percent activity level in Stage Two is close to the former 100 percent activity requirement, the five percent difference provides enough flexibility to enable participants to bid without having to match exactly their bidding eligibility. Further, the lack of a 100 percent activity requirement can improve bidders' ability to pursue backup bidding strategies during the auction. Thus the Bureaus believe that a staged bidding approach will better serve Auction No. 62 applicants than the activity requirement advocated by the commenters.

92. Another commenter proposed that the minimum activity level in Stage One of the auction be 50 percent of bidding eligibility (Rounds 1–20), with minimum activity in Stage Two set for 75 percent (Rounds 21 and thereafter), suggesting in the alternative that the Bureaus adopt a 100 percent minimum activity requirement in Stage Three, which would commence with Round 41. The commenter believes the lower activity requirements will result in higher bids, by allowing bidders to monitor activity on certain allotments without being forced to bid or drop out. However, the Bureaus believe that such lower activity requirements will prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. The Bureaus believe the 75 percent Stage One activity requirement represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction. The Bureaus thus decline to adopt the commenter's suggestion.

93. The Bureaus adopt the following activity levels for each stage of the auction. The Bureaus reserve the discretion to further alter the activity percentages before and/or during the auction.

94. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds (4/3).

95. *Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths ($^{20}/_{19}$).

96. *Caution:* Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the FCC Auction System or by accessing the bidder summaries on the public results page.

iv. Stage Transitions

97. The auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureaus believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 62.

v. Activity Rule Waivers and Reducing Eligibility

98. The Bureaus adopt their proposal that each bidder be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a proactive waiver) or applied automatically by the FCC Auction System (known as an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. The Bureaus are satisfied that its practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

99. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

100. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in Auction Stages. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

101. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

vi. Auction Stopping Rules

102. For Auction No. 62, the Bureaus proposed to employ a simultaneous stopping rule approach. The Bureaus also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

103. The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

104. In addition, the Bureaus proposed that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

105. The Bureaus proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

106. Two commenters suggest using a non-simultaneous stopping rule. The Bureaus believe that experience in prior

auctions demonstrates that their proposed auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The Bureaus therefore decline the commenters suggestion and adopt the Bureaus' proposed stopping rules. Auction No. 62 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule.

vii. Auction Delay, Suspension, or Cancellation

107. Because the Bureaus' approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt their proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

108. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

109. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

110. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions. This is consistent with policy applied in earlier spectrum auctions, including Auction Nos. 25, 27, and 54 (Closed Broadcast); Auction No. 32 (AM Broadcast); and Auction No. 37 (FM Broadcast).

111. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 62, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each MX group listed in Attachment A of the *Auction No. 62 Procedures Public Notice.* The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. Based on the Bureaus' experience in using minimum opening bids in other auctions, the Bureaus believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.

112. In the alternative, the Bureaus sought comment on whether, consistent with the § 309(j), the public interest would be served by having no minimum opening bid or reserve price.

113. One commenter requests that the Bureaus lower the minimum opening bids for two FM allotments—FM145, Arnoldsburg, WV and FM146, Burnsville, WV, claiming that the communities are within two of West Virginia's poorest rural counties and the population within each county is decreasing. As discussed above, population is but one factor in determining minimum opening bid amounts. Furthermore, the Bureaus consider population estimates within the proposed FM service contour at the allocation reference coordinates, not county population data. Generally, the service area of an FM station proposal extends beyond the boundaries of a particular county, and the population within that service area is therefore greater than the population of the county. Moreover, many allotments in Auction No. 62 with similar population coverage are in rural areas with lower than average household income and have experienced a population decline. Under these circumstances, the Bureaus are not persuaded that the minimum bid amounts are unreasonable, and decline to modify the minimum opening bid amounts for the two West Virginia FM allotments.

114. Another commenter seeks to reduce the minimum opening bid amount for FM 113, Due West, SC, Channel 237A. As the original proponent of the FM allotment, the commenter asserts that the proposed minimum opening bid amount is excessive, considering the population of the community of Due West, the area demographics, and the potential for upgrade and maximization. While conceding that the total population for the proposed Due West facility is over 100,000 persons, the commenter claims that the dominant market that the station would serve is already a depressed market for radio stations. The Bureaus are not persuaded that the minimum bid amount is disproportionate to the population to be served by the proposed FM facility in this instance, and accordingly decline to modify the minimum opening bid amount for the Due West, SC, FM allotment.

115. More generally, a commenter alleges that the Commission has oversimplified the method used to ascertain the population for each FM allotment. Specifically, in calculating

the coverage area of an allotment, he claims that the Commission used perfect circles of coverage instead of the preferred terrain-dependant coverage. Contrary to a commenter's contention, the Commission calculated coverage areas and associated populations using terrain-dependant coverages. Specifically, the staff used 360 evenly spaced radials for each allotment, starting at true north, and calculated the specific antenna height above mean sea level to achieve the correct class maximum antenna height above average terrain (HAAT). Then, using class maximum facilities centered at the allotment reference coordinates, the staff determined the contour distance for all azimuths. These contours were then used to calculate the population for each FM allotment. This method provides more than adequate accuracy to determine the population to be served by the proposed FM facility for the purpose of calculating minimum opening bid amounts.

116. The Bureaus believe that the proposed minimum bid amounts are appropriate, and the Bureaus adopt their proposal. The minimum opening bid amounts the Bureaus adopt for Auction No. 62 are reducible at the discretion of the Bureaus. The Bureaus emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

117. The specific minimum opening bid amounts for each construction permit available in Auction No. 62 are set forth in Attachment A of the *Auction No. 62 Procedures Public Notice*.

iii. Minimum Acceptable Bid Amounts and Bid Increment Amounts

118. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*i.e.*, (provisionally winning bid amount) * (1.10). The Bureaus will round the result using its standard rounding procedures. The Bureaus further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if the Bureaus determine that circumstances so dictate. One commenter suggests reducing the minimum bid increment to five percent after ten rounds or once the high bid exceeds $100,000, arguing that the ten percent increment disadvantages smaller entities as the high bids increase. The Bureaus believe that a bid increment smaller than ten percent has the potential to prolong the auction, but note again that the Bureaus retain the discretion to change the minimum acceptable bid amounts and bid increments if events so warrant. Thus, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

119. In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts. The FCC Auction System will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount.

120. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and eight other bid amounts based on the bid increment percentage. The first additional acceptable bid amount, above the minimum acceptable bid amount, equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the bid increment percentage is 10 percent, then the next bid amount will equal (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc. The Bureaus will begin the auction with a bid increment percentage of 10 percent. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

121. In the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit. The additional bid amounts above the minimum acceptable bid amount are calculated using the bid increment percentage as described in the previous paragraph.

122. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus may also use their discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

iv. Provisionally Winning Bids

123. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

124. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureaus adopt their proposal. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit, unless that provisionally winning bid was withdrawn. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

v. Bidding

125. During a round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw provisionally winning bids from previous bidding rounds, remove bids placed in the

current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

126. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 62. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

127. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) The construction permits applied for on the bidder's FCC Form 175 and (2) the bidder's upfront payment amount. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

128. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

129. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an ''upload'' function that allows bidders to upload text files containing bid information.

130. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount for that construction permit for the following round.

131. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

132. In the *Auction No. 62 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

133. Some commenters suggested modifications to the Bureau's bid withdrawal procedures. One commenter notes that, in Auction 37, some high bids were withdrawn late in the auction, returning those permits to the Commission after competing bidders had reduced their bidding eligibility below the level necessary to place new bids for the permits. The commenter suggests that, if a bidder withdraws a standing high bid for a particular permit, any applicant that had previously been a high bidder for that permit should, if necessary, have its bidding eligibility restored to enable it to resume bidding for the permit. The commenter's solution would involve substantial additional programming of the FCC Auction System. Instead, the Bureaus have opted for an alternative approach toward reducing the number of construction permits that remain unsold at the end of the auction due to withdrawn bids. First, by allowing bid withdrawals in only one round, the Bureaus are restricting the opportunity for withdrawing provisionally winning bids. Secondly, by implementing a staged auction and using activity requirements of less than 100 percent, the Bureaus are increasing the chance that other bidders might have sufficient eligibility to bid on constructions permits for which provisionally winning bids have been withdrawn.

134. A commenter suggests that the Commission allow the ''second-place bidder to be designated as a winner [of a permit] when the high bidder withdraws'' a high bid during the auction and no other bidder places a high bid on the permit by the end of the auction. The Commission's rules do not provide for the procedure suggested by the commenter. Pursuant to § 1.2109(b) of the Commission's rules, however, the Bureaus retain the discretion to offer licenses to the next-highest bidder if a winning bidder withdraws or defaults after the Commission has declared competitive bidding closed. Thus, the commenter's suggestion would require a change of the Commission's rules, which is beyond the scope of this proceeding. Moreover, after the close of Auction No. 44, WTB rejected a similar request by a second-highest bidder that sought a waiver of § 1.2109(b) of the Commission's rules.

135. Another commenter argues that bidders who withdrew bids in Auction No. 37 should be prohibited from bidding on those permits in Auction No. 62 for which they previously withdrew bids. As noted previously, bid withdrawals during an auction are allowed by the Bureaus' procedures, and the Bureaus' rules and auction procedures are designed to allow bidders to withdraw a limited number of bids for entirely legitimate reasons. The commenter's suggestion could result in an inefficient auction result: If bidding in a reauction is restricted, a construction permit may be won by a party other than the one that values the permit the most. For these reasons, the Bureaus decline to adopt the two commenter's proposals.

136. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the *remove bids* function in the FCC Auction System, a bidder may effectively *unsubmit* any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureaus adopt them for Auction No. 62.

137. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the *withdraw bids* function in the FCC Auction System (assuming that the bidder has not reached its withdrawal limit). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Note: Once a withdrawal is submitted

during a round, that withdrawal cannot be unsubmitted.

138. In previous auctions, the Bureaus have detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While the Bureaus continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, the Bureaus conclude that, for Auction No. 62, adoption of a limit on the use of withdrawals to one round per bidder is appropriate. By doing so the Bureaus believe the Bureaus strike a reasonable compromise that will allow bidders to use withdrawals. The Bureaus base their decision on this issue upon their experience with bid withdrawals in prior auctions, including PCS D, E and F block, 800 MHz SMR, and FM broadcast auctions. The Bureaus' decision is in no way a reflection of its view regarding the likelihood of any gaming in this auction.

139. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to one round. The round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a construction permit.

140. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a place holder provisionally winning bidder on the construction permit until a new bid is submitted on that construction permit.

141. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

142. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a construction permit during the course of an auction, and provides for the assessment of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the construction permit. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

143. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 62 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

144. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

IV. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

145. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

146. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 62 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in Bid Removal and Bid Withdrawal. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

i. Final Payments

147. If a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application. If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit. Within ten (10) business days after the date of the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). Broadcast

construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 CFR 1.2109(a).

ii. Long-Form Applications

148. Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 62. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

149. One commenter suggests that the FCC Form 301 deadline be extended beyond 30 days, arguing that the Auction No. 37 FCC Form 301 deadline occurred immediately after the end-of-year holiday period, and at a time of year when the locations of many allotments were subject to winter weather (snow & ice). The commenter implies, without explanation, that the winter weather interferes with winning bidders' ''finding and negotiating for a parcel of property.'' However, the Bureaus'' rules provide for FCC Form 301 filing within 30 days of the auction's close, which itself is not a fixed date. In Auction No. 37, all winning bidders timely filed their FCC Form 301 applications, and over half of the applicants, 139, received grants within 90 days of the FCC Form 301 filing deadline. Thus, the Bureaus see no reason to alter the filing deadline.

iii. Default and Disqualification

150. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.

vi. Refund of Remaining Upfront Payment Balance

151. All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 62 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

152. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division.

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 87–124, DA 05–1683]

Request for Comments On Panasonic Corporation Of North America's Request For Waiver Of Hearing Aid-Compatibility And Volume Control Requirements For Its Panasonic 2.4 GHz FHSS Cordless Telephone With Bone Conduction Type Ear-Piece

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks public comment on a Request for Waiver filed by Panasonic Corporation regarding the hearing aid compatibility and volume control requirements in order to market the Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Ear-Piece, Model KX–TG2388.

DATES: Reply comments may be filed on or before July 7, 2005.

ADDRESSES: You may submit comments identified by CC Docket 87–124, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission s Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- E-mail: *Arlene.Alexander@fcc.gov.* Include the docket number(s) in the subject line of the message.
- Mail: Federal Communications Commission, Consumer & Governmental Affairs Bureau, 445 12th Street, SW., Room CY–418, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Arlene Alexander, (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail *Arlene.Alexander@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 05–1683, released June 17, 2005. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file reply comments on or before July 7, 2005. All filings must reference CC Docket No. 87–124. Reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Reply comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the reply comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the

applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenter must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc. will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

Parties who choose to file by paper should also submit their reply comment on diskette. These diskettes should be submitted, along with three paper copies to: Arlene Alexander, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room CY–C418, Washington, DC 20554. Such a submission should be a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (CC Docket No. 87–124)), type of pleading (Reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrases ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–CB402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

A copy of this document, Panasonic's Request for Waiver, and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document, Panasonic's Request for Waiver submission and any subsequently filed document in this matter may also be purchased from the Commission's duplicating contractor, BCPI, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. A copy of the submission may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/cgb/ecfs* (insert CC Docket No. 87–124 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This Public Notice can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro.*

Synopsis

On April 19, 2005, Panasonic Corporation filed a Request for Waiver with the Federal Communications Commission (Commission) of the hearing aid compatibility and volume control requirements set forth in 47 CFR 68.316 and 68.317 in order to market the Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Ear-Piece, Model KX–TG2388. Panasonic asserts that the non-conforming ear-piece will benefit the special needs of ''transmission hearing impaired'' persons, *i.e.*, individuals who have loss of hearing in the outer ear that collects incoming sound waves. Panasonic also states that the product would be labeled as non-hearing aid compatible, contain a warning that the phone may not be used in a public location, and provide instructions on how to reduce feedback in a hearing aid caused by the telephone.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–14061 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 87–124, DA 05–1653]

Obligation of Telecommunications Equipment Manufactures And Telecommunications Services Providers To Designate Agent For Complaints Received By The FCC

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission reminds telecommunications equipment manufacturers and telecommunications service providers of their obligation to designate an agent for service of informal and formal complaints received by the Commission.

DATES: Effective June 14, 2005.

FOR FURTHER INFORMATION CONTACT: Arlene Alexander, (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail *Arlene.Alexander@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 05–1653, released June 14, 2005. This designation or updated designation information may be sent to the Commission via e-mail to *Section255_POC@fcc.gov* or mail 1 copy only to: Federal Communications Commission, Attention: Arlene Alexander, 445 12th Street, SW., Room CY–C418, Washington, DC 20554. Contact information for section 255 telecommunications equipment manufacturers is posted on the Consumer & Governmental Affairs Bureau's Web site at: *http://www.fcc.gov/cgb/dro/section255_manu.html;* contact information for telecommunications service providers is posted at *http://www.fcc.gov/cgb/dro/service_providers.html;* and contact information for affected colleges and universities is posted at *http://*

www.fcc.gov/cgb/dro/section255_colleges.html. The Commission asks that you check this information for accuracy. If the information is not accurate, current, or if it is non-existent, please e-mail the correct information to *Section255_POC@fcc.gov.* The full text of this document and filings will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. Filings may also be viewed on the Consumer & Governmental Affairs Bureau's, Disability Rights Office home page at *http://www.fcc.gov/cgb/dro.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This Public Notice can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro.*

Synopsis

On September 29, 1999, the Commission released a *Report and Order and Further Notice of Inquiry (RO & FNOI)* that adopted regulations implementing section 255 of the Communications Act, which requires telecommunications equipment manufacturers and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. (*See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996,* Report and Order and Further Notice of Inquiry *(RO & FNOI)*, WT Docket No. 96–198, FCC 99–181, 16 FCC Rcd 6417 (September 29, 1999), published at 65 FR 63235, November 19, 1999). The regulations require, in part, that equipment manufacturers and service providers covered by section 255 of the Communications Act, designates an agent for service of informal and formal complaints received by the Commission. (*See* 47 CFR 6.18 and 7.18). The designation shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–14060 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2719]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 8, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by August 4, 2005. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 6.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–13970 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2721]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 12, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by August 4, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands (IB Docket 01–185).

Number of Petitions Filed: 1.

Subject: In the Matter of Facilitating Opportunities for Flexible, Efficient and Reliable Spectrum Use Employing Cognitive Radio Technologies (ET Docket 03–108).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–13971 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–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: 000831F
Name: A. Burghart Shipping Co., Inc.
Address: 52 Fadem Road, Box 790, Springfield, NJ 07081.
Date Revoked: June 12, 2005.
Reason: Failed to maintain a valid bond.

License Number: 018008N
Name: ACX Logistics,Inc.
Address: 8723 Bellanca Avenue, Unit B, Los Angeles, CA 90045.
Date Revoked: July 1, 2005.
Reason: Surrendered license voluntarily.

License Number: 003294F
Name: Air Marine Transport, Inc.
Address: 978 Shoreline Drive, San Mateo, CA 94404.
Date Revoked: June 22, 2005.
Reason: Failed to maintain a valid bond.

License Number: 017680N
Name: American Vantec, Inc.
Address: 16400 S. Avalon Blvd., Gardena, CA 90248.
Date Revoked: July 1, 2005.
Reason: Failed to maintain a valid bond.

License Number: 007699N
Name: Caribbean American Freight, Inc.

Address: 9393 NW 13th Street, Miami, FL 33122.
Date Revoked: June 15, 2005.
Reason: Failed to maintain a valid bond.

License Number: 018304F
Name: Comis Int'l Inc.
Address: 690 Knox Street, Suite 220, Torrance, CA 90502.
Date Revoked: June 20, 2005.
Reason: Failed to maintain a valid bond.

License Number: 002350F
Name: Eastern International Forwarders, Inc.
Address: 10170 S.W. 102nd Avenue, Miami, FL 33176.
Date Revoked: August 14, 2005.
Reason: Surrendered license voluntarily.

License Number: 001278F
Name: Interproject Shipping Services, Inc.
Address: 10 Exchange Place, 19th Floor, Jersey City, NJ 07302.
Date Revoked: June 30, 2005.
Reason: Failed to maintain a valid bond.

License Number: 002249NF
Name: Keihin America Corporation dba Keihin Ocean Line
Address: 1447 W 178th Street, Suite 300, Gardena, CA 90248.
Date Revoked: June 24, 2005.
Reason: Failed to maintain valid bonds.

License Number: 016600N
Name: Optimodal, Inc.
Address: 119 North High Street, West Chester, PA 19380.
Date Revoked: June 30, 2005.
Reason: Failed to maintain a valid bond.

License Number: 017170F
Name: Pavao Sosic dba C.O. Logistic
Address: 3711 Country Club Drive, Suite 6, Long Beach, CA 90807.
Date Revoked: June 17, 2005.
Reason: Failed to maintain a valid bond.

License Number: 019075N
Name: Shiplane Transport, Inc.
Address: 2620 N. Oak Park Avenue, Chicago, IL 60707.
Date Revoked: June 24, 2005.
Reason: Failed to maintain a valid bond.

License Number: 017236N
Name: Simpson's Shipping Enterprise
Address: 248 West Lincoln Avenue, Mt. Vernon, NY 10550.
Date Revoked: June 20, 2005.
Reason: Failed to maintain a valid bond.

License Number: 003186NF
Name: World Trade Transport of Virginia dba GPS Logistics
Address: c/o GPS Logistics, 20 Central Street, Suite 108, Salem, MA 01970.
Date Revoked: June 30, 2005.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. 05–14291 Filed 7–19–05; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
013154N	Fastpak Express Corporation, 17907 S. Figueroa Street, Unit A, Gardena, CA 90248	May 4, 2005.
015131N	Formosa International Freight Forwarder, Inc., 20 West Lincoln Avenue, Suite 302, Valley Stream, NY 11580.	May 15, 2005.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. 05–14290 Filed 7–19–05; 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 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Ocean Blue Express, Inc., 1320 E. Olympic Blvd., Suite 214, Los Angeles, CA 90021. Officers: Terry E. Yi, Vice President, (Qualifying Individual), Sung Ho Sun, President.

Powin Express, Inc., 250 Clary Avenue, San Gabriel, CA 91776. Officers: Alvan Kee-Chin, Chow, Secretary, (Qualifying Individual), Jing C. BuckHalter, CEO.

Caribbean Shipping Solutions, Inc., 1920 NW 187 Street, Opa-Locka, FL 33056. Officer: Marian Velazquez, Director, (Qualifying Individual).

S&R Shipping Services, LLP, 10043 Worrell Avenue, Glenn Dale, MD 20769. Officers: George O. Simon, Co-Owner, (Qualifying Individual), Claude E. Robertson, Co-Owner.

Safe Movers, Inc. dba Isaac's Relocation Service, 155 North Beacon Street, Brighton, MA 02135. Officers: Yizhaq Edry, Treasurer, (Qualifying Individual), Ami Joseph, President.

Estes Express Lines, 3901 West Broad Street, Richmond, VA 23230. Officer: Paul J. Dugent, Vice President, (Qualifying Individual).

US Auto Connect dba USAC International, 327 Chestnut Ave., #247, Long Beach, CA 90802. Officer: Andriy Yarotsky, President, (Qualifying Individual).

Pacific Zipping, LLC, 1886 Copa Way, Monterey Park, CA 91754. Officers: Mei Sheung Lee, Manager, (Qualifying Individual), Hok Kwan NG, Member.

Non-Vessel–Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Elite International Shipping Company LLC, 41 Victoria Street, Newark, NJ 07114. Officers: Daniel D. Agboh, Vice President, (Qualifying Individual), Emmanuel L. Agboh, President.

OCS Logistics Inc., 923 E. Valley Bl. #106, San Gabriel, CA 91776. Officers: Michael N. Wong, President, (Qualifying Individual), Lynnwood Jen, Secretary.

American Furniture Company dba AH Logistics, 801 Comanche NE, Albuquerque, NM 87190. Officers: Carlos Martinez-Tomatis, Vice President, (Qualifying Individual), Lee S. Blaugrund, President.

Logimex Solutions International, LLC, dba Ameritrans Express International, 7985 NW 198th Terrace, Miami, FL 33015. Officers: Javier R. Munoz, President, (Qualifying Individual), Ana R. Munoz, Vice President.

Taurus Line, Inc. dba Taurus Marine Line, dba Taurus Logistics (USA), 1560 Sawgrass Corporate Parkway, 4th FL, Sunrise, FL 33323. Officers: Hector Buitano, Jr., President, (Qualifying Individual), Hector H. Buitano, Sr.

Ocean Freight Forwarder–Ocean Transportation Intermediary Applicants:

Pointer Int'l Forwarders, Inc., 4851 NW 79th Avenue, Suite 7, Doral, FL 33166. Officers: Maria A. Ramos, President, (Qualifying Individual), Eduardo C. Ramos, Vice President.

FRX, Inc. dba LifeLink Logistics, Inc., 6920 Engle Road, Suite 11, Middleburg Heights, OH 44130. Officers: Robert A. Young, President, (Qualifying Individual), Thomas A. Ford, Vice President.

All Services and Merchandise Corp. dba A.S.A.M., 2840 NW 108 Ave., Miami, FL 33172. Officers: Henry Antonio Herrera, President, (Qualifying Individual), Wilman Villegas, Vice President.

Liberty Shipping Corporation, 98–12 211 Street, Queens Village, NY 11428. Officers: Rajendra Persaud, Secretary, (Qualifying Individual), Cheddi Juma, President.

Dated: July 15, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–14292 Filed 7–19–05; 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 August 15, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. FirstFed Bancorp, Inc. Employee Stock Ownership Plan, Bessemer, Alabama; to become a bank holding company by acquiring 32 percent of the voting shares of FirstFed Bancorp, Inc., and its subsidiary, First Financial Bank, both of Bessemer, Alabama.

Board of Governors of the Federal Reserve System, July 15, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14266 Filed 7–19–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 05-13724) published on page 40364 of the issue for Wednesday, July 13, 2005.

Under the Federal Reserve Bank of St. Louis heading, the entry for Union Bankshares, Inc., Mena, Arizona, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Union Bankshares, Inc., Mena, Arizona; to acquire 100 percent of the voting shares of First Paris Holding Company, Little Rock, Arkansas, and thereby indirectly acquire voting shares of The First National Bank at Paris, Paris, Arkansas.

Comments on this application must be received by August 8, 2005.

Board of Governors of the Federal Reserve System, July 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14205 Filed 7–19–05; 8:45 am]

BILLING CODE 6210–01–S

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 August 12, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. H.F. Gehant Bancorp, Inc., West Brooklyn, Illinois; to become a bank holding company by acquiring 100

percent of the voting shares of H.F. Gehant Banking Co., West Brooklyn, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First Banks, Inc., Hazelwood, Missouri, and its subsidiary bank holding company,The San Francisco Company, San Francisco, California; to acquire 100 percent of the voting shares of Northway State Bank, Grayslake, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Country Holding Corp., Lakeway, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas Country Bank, Lakeway, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14206 Filed 7–19–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12% for the quarter ended June 30, 2005. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 13, 2005.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 05–14244 Filed 7–19–05; 8:45 am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers of Excellence in Health Marketing and Health Communication, Program Announcement #CD 05 108; Correction

Correction: This notice was published in the **Federal Register** on July 12, 2005, Volume 70, Number 132, pages 40038–40039. The times and dates of the meeting have been changed.

Times and Dates: 7:30 p.m.–10 p.m., August 15, 2005 (Closed), 7:30 a.m.–5 p.m., August 16, 2005 (Closed).

Contact Person for more Information: Mary Lerchen DrPH, MS, Assistant Director for Research Practices and Peer Review, Office of Public Health Research, 1600 Clifton Road NE., Mailstop D–72, Atlanta, GA 30333, Telephone (404) 371–5282.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 14, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–14222 Filed 7–19–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Job Opportunities for Low-Income Individuals (JOLI) Program

Announcement Type: Grant—Initial.

Funding Opportunity Number: HHS–2005–ACF–OCS–EO–0054.

CFDA Number: 93.593.

Due Date for Applications: Application is due August 19, 2005.

Executive Summary: The Job Opportunities for Low-Income Individuals (JOLI) Program is authorized under Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended by Section 112 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, as amended. The Act authorizes the Secretary of the U.S. Department of Health and Human Services (HHS) to enter into agreements with non-profit organizations (including faith-based organizations and community development corporations) for the purpose of conducting projects designed to create employment opportunities for certain low-income individuals (42 U.S.C. 9926).

I. Funding Opportunity Description

Priority Area 1. Description

The Job Opportunities for Low-Income Individuals (JOLI) Program is authorized under Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended by Section 112 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 Public Law, 104–193, as amended. The Act authorizes the Secretary of the U.S. Department of Health and Human Services (HHS) to enter into agreements with non-profit organizations (including faith-based organizations and community development corporations) for the purpose of conducting projects designed to create employment opportunities for certain low-income individuals (42 U.S.C. 9926).

A. Program Purpose, Scope, and Focus

The purpose of the JOLI program is to provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for individuals receiving Temporary Assistance for Needy Families (TANF) and for other low-income individuals. Projects focus on one of three program strategies: self-employment/ micro-enterprise, new business ventures, and business expansion. Priority will be given to applicants proposing to serve those areas containing the highest percentage of individuals receiving TANF under a State program, which is funded under Part A of Title IV of the Social Security Act and individuals whose income level does not exceed 100 percent of the official poverty line. Annual revisions of these poverty guidelines are normally published in the **Federal Register** in February or early March. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries; Congressional offices;

by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402; or by accessing the following Web site: *(http://aspe.os.dhhs.gov/poverty/index.shtml).*

While projected employment in future years may be included in the application, it is essential that the focus of the project concentrate on the creation of new full-time, permanent jobs and/or new business development opportunities for TANF recipients and other low-income individuals during the grant project period. The Office of Community Services (OCS) is particularly interested in receiving innovative applications that grow out of the experience and creativity of applicants and the needs of their clientele and communities and that seek to integrate projects into a larger effort of broad community revitalization.

Special consideration will be given to applicants located in areas characterized by conditions of extreme poverty and other indicators of socio-economic distress. Examples of such distress may include: a poverty rate of at least 20 percent, designation as an Empowerment Zone/Enterprise Community (EZ/EC), high levels of violence, gang activity or drug use. Please see Section V.1 Evaluation Criteria for the related criterion that will be used in the evaluation of applications.

Due to the limited amount of funds available under this program, only a single application from any one eligible applicant will be funded by OCS from FY 2005 JOLI funds pursuant to this announcement. Each application must consist of one project only. Please note however that this factor will not be used as a responsiveness criterion in the review of applications.

OCS will not provide funding to a previously funded grantee to carry out the same project in the same target area. Previously funded grantees must apply for a different target area to be considered for funding under this announcement.

B. Definitions

The following definitions apply:

Budget and Project Periods—Applications for JOLI projects must have a 36-month project period with a 36-month budget period.

Community-Level Data—Key information to be collected by each grantee that will allow for a national-level analysis of common features of JOLI projects. This consists of data on the population of the target area, including the percentage of TANF recipients and others on public assistance, and the percentage whose income falls below the poverty line; the unemployment rate; the number of new business starts and business closings; and a description of the major employers and average wage rates and employment opportunities with those employers.

Community Development Corporation—A private, non-profit entity, governed by a board of directors consisting of residents of the community and business and civic leaders, that has as a principal purpose the planning, developing, or managing low-income housing or community development projects.

Hypothesis—An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example, the following is a hypothesis: ''Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application.'' In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

Intervention—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package is planned intervention.

Job Creation—To bring about, by activities and services funded under this program, new jobs, that is, jobs that were not in existence before the start of the project. These activities can include self-employment/micro-enterprise training, the development of new business ventures or the expansion of existing businesses.

Non-Profit Organization—Any organization (including a faith-based organization or a community development corporation) exempt from taxation by reason of paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986.

Outcome Evaluation—An assessment of project results as measured by collected data which define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for replicability. It should answer the question: Did this project work?

Private Employers—Third party non-profit organizations or third party for-profit businesses operating or proposing to operate in the same community as the applicant and which are proposed or potential employers of project participants.

Process Evaluation—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred and how they were dealt with and recommend improved means of future implementation. It should answer the question: ''How was the program carried out?'' In concert with the outcome evaluation, it should also help explain, ''Why did this program work/not work?'' and, ''What worked and what did not?''

Program Participant/Beneficiary—An individual eligible to receive TANF under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act) and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent revision of the Poverty Income Guidelines published by the Department of Health and Human Services.

Self-Sufficiency—A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.

Third Party—Any individual, organization, or business entity that is not the direct recipient of grant funds.

Third Party Agreement—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

Third Party In-Kind Contributions—The value of non-cash contributions provided by non-Federal third parties which may be in the form of real property, equipment, supplies and/or other expendable property, and the value of goods and services directly

benefiting and specifically identifiable to the project or program.

C. Description of Three Program Strategies

The purpose of the JOLI program is to provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for individuals receiving Temporary Assistance for Needy Families (TANF) and other low-income individuals. In order to create these employment and other opportunities, funded projects focus on one of the following three program strategies: self-employment/micro-enterprise, new business ventures, and businesses expansion. Applicants must state clearly both in the abstract and at the beginning of the project narrative which one of these three program strategies they will be using. While OCS will accept applications that propose projects containing more than one of these program strategies, OCS strongly encourages applicants to focus on only one. This factor will not be used as a responsiveness criterion in the review of applications.

Program Strategy 1: Business Expansion

Applicants applying under Strategy 1 must show that the proposed project will provide technical and/or financial assistance to businesses already in existence to allow the businesses to expand by helping them to obtain better marketing services, contracts, access to additional money to help the business grow, etc., resulting in the creation of new jobs.

Program Strategy 2: Self-Employment/Micro-Enterprise Projects

Applicants applying under Strategy 2 must show that the proposed project will create self-employment/micro-enterprise opportunities for eligible participants.

Self-employment is the creation of a business that is designed to employ a single individual such as home-based day care, graphic design, medical billings, sewing and secretarial service, etc. Micro-enterprise is the creation of a business that is designed to hire from one to four persons, *i.e.*, a cleaning business that will create more than one job.

For this Strategy, OCS does not consider a job to have been created until contracts and/or subcontracts have been committed at the end of training for each of these self-employment/micro-enterprise businesses that ultimately may be construed as jobs. All applications under this strategy must address the following items:

- The types of self-employment and/or micro-enterprise businesses that may thrive in the target area
- Need for such businesses in those communities
- Applicant's ability to help secure commitments of contracts/subcontracts at the end of training for each of those self-employment/micro-enterprise businesses

Program Strategy 3: New Business Ventures

Applicants applying under this strategy must show the development of a new business that will train and employ 40–100 TANF and/or low-income persons to work within that business.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $5,000,000.

Anticipated Number of Awards: 10 to 12.

Ceiling on Amount of Individual Awards: $500,000 per project period.

Floor on Amount of Individual Awards: None.

Average Projected Award Amount: $450,000 per project period.

Length of Project Periods: 36-month project period with a 36-month budget period.

The FY 2006 President's Budget does not include or propose funding for the JOLI program.

III. Eligibility Information

1. *Eligible Applicants:*

- Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education
- Others (See Additional Information on Eligibility below.)

Additional Information on Eligibility: Non-profits having a 501(c)(4) status with the IRS are also eligible to apply for this program.

Faith-based organizations are eligible to apply for this program.

2. *Cost Sharing/Matching:* None.

3. *Other:* All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.grants.gov/*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com/.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.

When applying electronically we strongly suggest you attach your proof of non-profit status with your electronic application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors: Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

IV. Application and Submission Information

1. Address to Request Application Package: Administration for Children and Families, OCS Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, Phone: 1–800–281–9519, E-mail: *ocsgrants@acf.hhs.gov.*

2. Content and Form of Application Submission:

A. Application Content

(1) Each application must include the following components:

(a) *Table of Contents.*

(b) *Abstract of the Proposed Project*—Very brief, not to exceed 250 words.

Please see Section V for additional information for preparing the project abstract.

(c) *Completed Standard Forms*—Standard forms 424 and 424A must be completed and signed where appropriate by an official of the organization applying for the grant who has authority to obligate the organization legally. Information on other forms that must be submitted with the application is included below under the heading, ''Standard Forms and Certifications.''

(d) *Narrative Budget Justification*—Please see Section V for additional information for preparing the narrative budget justification.

(e) *Project Narrative*—Please see Section V for instructions for preparing the project narrative.

(f) *Documentation of 501(c)(3) or (4) status*—Please see Section III for what will be acceptable as proof of non-profit status.

(g) *Cooperative Partnership Agreement with the Designated Agency Responsible for the TANF Program*—A formal, cooperative relationship between the applicant and the designated State or local agency responsible for administering the TANF program (as provided for under Part A of Title IV of the Social Security Act) in the area served by the project is a requirement for funding (see list of the State Human Services Administrators administering TANF). The application must include a signed, written agreement between the applicant and the designated State or local agency responsible for administering the TANF program. The agreement must describe the cooperative relationship, including specific activities and/or actions each of these entities propose to carry out over the course of the grant period in support of the project. The agreement, at a minimum, must cover the specific services and activities that will be provided to the target population.

Applications submitted without an explicit agreement with the TANF agency in the area served by the project will receive fewer points.

(h) *Mobilization of Resources*—There is no match requirement for the Job Opportunities for Low-Income Individuals (JOLI) Program.

(i) *Third Party Agreements*—Any applicant submitting an application for funding who proposes to use some or all of the requested OCS funds to enter into a third party agreement in order to make an equity investment (such as the purchase of stock) or a loan to an organization or business entity (including a wholly-owned subsidiary), must include in the application a copy of the signed third party agreement for approval by OCS. Note that partners involved in the proposed project should be responsible for substantive project activities and services. Applicants should note that partnership relationships are not created via service delivery contracts.

All third party agreements must include written commitments as follows:

From the third party (as appropriate):

- Jobs to be created as a result of the infusion of grant funds will be filled by low-income individuals;
- The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility;
- If the grantee's equity investment equals 25 percent or more of the business' assets, the grantee will have representation on the board of directors;
- Reports will be made to the grantee regarding the use of grant funds no less than on a quarterly basis;
- A procedure will be developed to assure that there are no duplicate counts of jobs created; and
- Detailed information should be provided on how the grant funds will be used by the third party.

In addition to the above, any third party agreement covering an equity investment must also contain the following information:

- The type of equity transaction (*e.g.*, stock purchase);
- Purpose(s) for which the equity investment is being made;
- Cost per share and basis for determining cost per share;
- Number of shares being purchased;
- Percentage of ownership of the business; and,
- Number of seats on the board, if applicable.

In addition to the above, any third party agreement covering a loan transaction must also contain the following information:

- Purpose(s) for which the loan is being made;
- Rates of interest and other fees;
- Terms of loan;
- Repayment schedules;
- Collateral security; and
- Default and collection procedures.

All third party agreements must also include detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

All third party agreements should be accompanied by:

- A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR part 74, to protect adequately any federal funds awarded under the application;
- Financial statements for the third party organization for the prior three years. (If not available because the organization is a newly-formed entity, include a statement to this effect); and
- Specifications as to how the grantee will provide oversight of the third party for the life of the agreement. Also, the agreement will specify that the third party will maintain documentation related to the expenditure of grant funds loaned to or invested in the third party and grant objectives as specified in the agreement, and will provide the grantee and HHS access to that documentation.

(2) Property and National Historic Preservation Act

If the applicant is proposing a project that will affect a property listed in, or is eligible for inclusion in, the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in, or is eligible for inclusion in, the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See SF–424B) Failure to comply with the cited Act will result in the application being ineligible for funding consideration.

(3) Creation of Jobs and Employment Opportunities

OCS is soliciting JOLI applications that propose the creation of jobs through the expansion of existing businesses, the development of new businesses, or the creation of employment opportunities through self-employment/micro-enterprise development. Proposed projects must show that the jobs and/or business/self employment opportunities to be created under this program will contribute to the achievement of self-sufficiency among the target population. The employment opportunities should provide hourly wages that exceed the minimum wage and also provide benefits such as health insurance, childcare, and career development opportunities.

(4) Support For Non-Custodial Parents

The Office of Community Services (OCS) and the Office of Child Support Enforcement (OCSE), both located in ACF, signed a Memorandum of Understanding (MOU) to foster and enhance partnerships between OCS

grantees and local Child Support Enforcement (CSE) agencies. (See the list of CSE State Offices that can identify local CSE agencies.) In the words of the MOU:

''The purpose of these partnerships will be to develop and implement innovative strategies in States and local communities to increase the capability of low-income parents and families to fulfill their parental responsibilities. Too many low-income parents are without jobs or resources needed to support their children. A particular focus of these partnerships will be to assist low-income, non-custodial parents of children receiving TANF to achieve a degree of self-sufficiency that will enable them to provide support that will free their families of the need for such assistance.''

Accordingly, a rating factor and a review criterion have been included in this Program Announcement that will award two points to applicants who have entered into partnership agreements with their local CSE agency to provide for referrals to their project in accordance with provisions of the OCS–OCSE MOU (See Element II, Sub-Element II(c)).

Information on the location of the local CSE Agency in your state can be found at *http://www.acf.dhhs.gov/programs/cse/extinf.htm#exta*.

(5) Technical and Financial Assistance to Employers and Individuals

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves in areas such as job-readiness, literacy, and other basic skills training, job preparation, self-esteem building, etc. Financial assistance may be provided to the private employer as well as to the individual.

If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses to create the planned jobs must be included with the application.

(6) Applicant Experience and Cost-per-Job

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people.

The Office of Community Services will not fund projects where the cost-per-job in JOLI funds exceeds $10,000. Favorable consideration will be given to those applicants who show the lowest cost-per-job created for low-income individuals.

(7) Loan Funds

The creation of a revolving loan fund with funds received under this program is an allowable activity. Loans made to eligible beneficiaries for business development activities must be at or below market rate. Interest accrued on revolving loan funds must be used to continue or expand the activities of the approved project.

B. Application Format

Submit application materials on white 8 x 11 inch paper only. Do not use colored, oversized or folded materials.

Do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The application must be double-spaced, and the font size must be no smaller than Times New Roman 12-point. The margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

C. Number of Copies

Each application should include one signed original and two additional copies.

D. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives and Business Plan must not exceed 60 pages. The page limitation does not include the following attachments and appendices: Standard Forms or Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.grants.gov/*.
- You must search for the downloadable application package by the CFDA number.

Applicants that are submitting their application in paper format should submit an original and two copies of the complete application. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on

Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Standard Forms and Certifications: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with this form. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Those organizations required to provide proof of non-profit status, please refer to Section III.3.

Please see Section V.1 for instructions on preparing the full project description.

3. *Submission Dates and Times:* Due Date for Applications: Application is due August 19, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Receipt acknowledgment for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. Applicants will receive an electronic acknowledgment for applications that are submitted via *http://www.grants.gov/*.

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Project Description	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Budget Narrative/Justification	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
SF424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By date of award.
Assurances	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By date of award.
Table of Contents	See Section IV.2	Found in Section IV.2	By application due date.
SF424A	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Sources and Use of Funds Statement	See Section V.1.	Found in Section V.1 Evaluation Criteria, Budget and Budget Justification.	By date of award.
Other: 3rd Party Agreements	See Section IV.2	Found in Section IV.2	By application due date.

What to submit	Required content	Required form or format	When to submit
SF424B	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Proof of Non-profit Status	See Section III.3	Found in Section III.3	By Time of Award.

Additional Forms: Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	Found in *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.

4. *Intergovernmental Review:*

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2) a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions that have elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. *Funding Restrictions:* Grant awards will not allow reimbursement of pre-award costs.

The use of funds for new construction, major renovation, or the purchase of real property is prohibited.

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

OCS will not provide funding to a previously funded grantee to carry out the same project in the same target area. Previously funded grantees must apply for a different target area to be considered for funding under this announcement.

6. *Other Submission Requirements:* Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. Please see Section IV.3 for an explanation of due dates. Applications should be mailed to: Administration for Children and Families, OCS Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Administration for Children and Families, OCS Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209.

Electronic Submission: Please see Section IV.2 for guidelines and requirements when submitting applications electronically via *http://www.grants.gov/.*

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 35 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. *Criteria:* The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''full project description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Part I—The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Business Plan

When Federal grant funds will be used to make an equity investment, provide a business plan. The business plan shall include an executive summary; a description of the business; a description of the industry, its current status and prospects; a description of the products and services to be created and/or sold including any features that may give products and services an advantage over the competition; market research and a marketing plan; design and development plans; operations plan; a description of the management team; overall schedule; projected job creation; financial plan; a discussion of the critical risks and assumptions; and anticipated community benefits. For a full description of what is required in the business plan, please see Section V, Evaluation Criteria, Sub-Element I(D).

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or

statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: a) a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or b) a copy of a currently valid IRS tax exemption certificate.

Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the ACF grant for which you are applying. ''Non Federal resources'' are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect

cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria: The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*i.e.*, from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach—35 Points

Element I: Project Theory, Design and Plan

The extent to which the applicant can show why and how the project, as proposed, is expected to lead to the creation of new employment opportunities for low-income individuals, which can lead to significant improvements in individual and family self-sufficiency.

The extent to which the applicant clearly demonstrates the cause-effect relationship between what the applicant plans to do and the results it expects to achieve. The extent to which applicants design and present their project in terms of a conceptual cause-effect framework (*i.e.*, as illustrated in the following paragraphs, which suggest a way to present a project so as to show the logic of the cause-effect relations between project activities and project results). Note that applicants are not required to use the exact language described.

Sub-Element (A): Description of Target Population, Analysis of Need, and Project Assumptions (10 Points)

The extent to which the application includes a description of the needs and problems of the population to be served that are to be addressed by the project; the current services available to that population and where and how they fail to meet their needs; why the proposed services or interventions are appropriate and will meet those needs; and the impact the proposed interventions will have on the project participants. (4 Points)

The extent to which the applicant identifies the precise target population to be served, the geographic area to be impacted, the percentage of low-income individuals and TANF recipients within the geographic area, as well as the unemployment rate and other data relevant to the project design. (2 Points)

The extent to which the application includes an analysis of the identified personal barriers to employment, job retention and greater self-sufficiency faced by the target population. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for child care, lack of suitable clothing or equipment or poor self-image.) (2 Points)

The extent to which the application includes an analysis of the identified community systemic barriers that the project will seek to overcome. These might include lack of jobs (high unemployment rate); lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services (employment service, child care, job training); high incidence of crime; inadequate health care; or environmental hazards (such as toxic dumpsites or leaking underground tanks). The extent to which the application addresses the personal and family services and support that might be needed by project participants after they are on the job which will enhance job retention and advancement. If the jobs to be created by the proposed project are themselves designed to fill one or more of the needs, or remove one of more of the barriers so identified, the extent to which the application highlights such issues in the discussion, *e.g.*, jobs in child care, health care, or transportation. (2 Points)

Sub-Element (B): Project Strategy and Design—Interventions, Outcomes, and Goals (10 Points)

The extent to which the application describes the proposed project activities, or interventions, and explains how they are expected to result in outcomes that will meet the needs of the program participants and assist them in overcoming the identified personal and systemic barriers to employment, job retention, and self-sufficiency (*i.e.*, what the project staff will do (interventions) with the resources provided to the project and how this will assist in creating and sustaining employment and business opportunities for program participants in the face of the needs and problems that have been identified). (4 Points)

The extent to which the applicant describes the major activities, or interventions, which are to be carried out in addressing the needs and problems identified in Sub-Element I(A) as well as the immediate changes or outcomes that are expected to result (*e.g.*, a job readiness training program might be expected to result in clients having increased knowledge of how to apply for a job, improved grooming for job interviews, and improved job interview skills; or business training and training in bookkeeping and accounting might be expected to result in project participants making an informed decision about whether they are suited for entrepreneurship). (2 Points)

The extent to which the applicant describes the intermediate outcomes that result from these immediate changes and expresses those outcomes in terms of measurable changes in knowledge, attitudes, behavior, or status/condition (*e.g.*, the immediate changes achieved by a job readiness program, coupled with technical assistance to an employer in the expansion of a business, could be expected to lead to intermediate outcomes of creation of new job openings and in the participant applying for a job with the company. The acquisition of business skills, coupled with the establishment of a loan fund, could be expected to result in the actual decision by the participant to go into a particular business venture or seek the alternative track of pursuing job readiness and training). (2 Points)

The extent to which the application describes how the achievement of these intermediate outcomes will be expected to lead to the attainment of the project goals depending on the project design: employment in newly created jobs, successful business ventures, or

employment in an expanded business. (2 Points)

Sub-Element (C): Business Plan (15 Points)

The extent to which the application includes a business plan containing the following elements: (1) An executive summary (limit to 2 pages) that is clear and descriptive; (2) a description of the industry, current status, and prospects; (3) a description of the products and services, including detailed descriptions of any products or services to be sold, the proprietary position of any of the products (*e.g.*, patents, copyright, trade secrets, *etc.*), and any features of the products or services that may give them an advantage over the competition; (4) market research that assures that the business has a substantial market to develop and achieve sales in the face of competition and that also describes the customer base by market segment, the market size and trends, an assessment of the strengths and weaknesses of the competition in the current market, and the estimated market share and sales; (5) a marketing plan that details the products, pricing, distribution, and promotion strategies (*i.e.*, what is to be done, how it will be done, and who will do it) that will be used to achieve the estimated market share and sales projections; (6) design and development plans for new products or services, if applicable, including items such as development status and tasks, difficulties and risks, product improvement, and new products and costs; (7) an operations plan that describes the kind of facilities, site location, space, capital equipment, and labor force (part and/or full time and wage structure) that are required to provide the company's product or service; (8) a description of the technical, managerial, and business skills and experience to be brought to the project by the management team, including a description of key management personnel and their primary duties, compensation and/or ownership, the organizational structure and placement of this proposed project within the organization, the board of directors, management assistance and training needs, and supporting professional services; (9) an implementation plan that shows the timing and interrelationships of the major events or benchmarks necessary to launch the venture and realize its objectives, including a month-by-month schedule of activities such as product development, market planning, sales programs, production and operations; (10) a description of the job creation activities and projections expected as a result of this project, including a description of the strategy that will be used to identify and hire individuals who are low-income (including those on TANF), an estimated number and description of the permanent jobs that will be created during the project period with particular emphasis on jobs for low-income individuals, the number of these jobs that have career development opportunities, the number of jobs that will be filled by individuals receiving TANF or other individuals whose income is less than 100 percent of the official poverty line, their projected annual salary, the number of self-employed and other ownership opportunities created, the specific steps to be taken by the grantee or a third party to develop and sustain self-employment after the businesses are in place, and the expected net profit of these businesses after deductions of business expenses; (11) a financial plan demonstrating and providing documentation for the economic supports underpinning the project and showing the project's potential and the timetable for financial self-sufficiency, including for both the applicant and the third party, if appropriate, profit and loss forecasts for the first three years, cash flow projections for the first three years, pro forma balance sheets for the first three years, a Sources and Use of Funds Statement for all funds available to the project, and a brief summary discussing any further capital requirements and methods or projected methods for obtaining needed resources; (12) an assessment of critical risks and assumptions relating to the industry, the venture, its personnel, the product or service market appeal, and the timing and financing of the venture; and (13) a description of other economic and non-economic benefits to the community such as development of a community's physical assets, provision of needed but currently unsupplied services or products to the community, or improvement in the living environment.

Results or Benefits Expected—30 Points

Element II: Significant and Beneficial Impact

Sub-Element (A): Quality of Jobs/ Business Opportunities (10 Points)

The extent to which the application describes quantifiable results in terms of the creation of permanent, full-time jobs; the development of business opportunities; or the expansion of existing businesses. The extent to which the project demonstrates an ability to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead welfare recipients from welfare dependency toward economic self-sufficiency. In developing business opportunities and self-employment for TANF recipients and other low-income individuals, the extent to which the applicant proposes, at a minimum, to provide training and support services to potential entrepreneurs including, but not limited to, technical assistance in basic business planning and management concepts, assistance in preparing a business plan and loan application, and assistance in accessing business loans. (5 Points)

The extent to which the application documents that the jobs and business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency (*e.g.*, a description of salaries that exceed the minimum wage, plus benefits such as health insurance, child care, and career development opportunities). (5 Points)

Sub-Element (B): Community Empowerment Consideration (3 Points)

The extent to which applicants are located in areas characterized by conditions of extreme poverty and other indicators of socio-economic distress. Examples of such distress may include: a poverty rate of at least 20 percent, designation as an Empowerment Zone/ Enterprise Community (EZ/EC), high levels of violence, gang activity or drug use. Applications will be reviewed and evaluated based on the extent to which they contain documentation that in response to these conditions, the applicant has been involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner, and they should identify how the proposed project will support the goals of that plan.

Sub-Element (C): Support for Non-custodial Parents (2 Points)

The extent to which the application includes a signed letter of agreement with the local Child Support and Enforcement (CSE) Agency for referral of eligible non-custodial parents to the proposed project. The extent to which applicants demonstrate they have entered into partnership agreements with local CSE Agencies and that they have developed and implemented innovative strategies to increase the capability of low-income parents and families, which assists them to fulfill their parental responsibilities. In addition, the extent to which such partnership agreements include referrals

of identified income eligible families and non-custodial parents economically unable to provide child support to the applicant's project.

Sub-Element (D): Cooperative Partnership Agreement With the Designated Agency Responsible for the TANF Program (5 Points)

The extent to which the application includes a signed, written agreement between the applicant and the designated State or local agency responsible for administering the TANF Program. The extent to which the agreement, at a minimum, covers the specific services and activities that will be provided to the target population. Note that applications that contain such an agreement may receive the maximum five (5) points.

Note that applications that have not included a signed written agreement but document that the organization is in the process of securing a cooperative relationship with the agency responsible for administering the Temporary Assistance For Needy Families Program (TANF) (as provided for under Title IV-A of the Social Security Act) in the area served by the project may receive no more than two (2) points.

Sub-Element (E): Public/Private Partnerships and Resources (5 Points)

The extent to which the application describes any public/private partnerships, which will contribute to the implementation of the project. Where partners' contributions to the project are a vital part of the project design and work program, the extent to which the narrative describes the undertakings of the partners. The extent to which a partnership agreement specifying the roles of the partners and making a clear commitment to the fulfilling of the partnership role is included in an appendix to the application. The extent to which the application indicates a firm commitment of resources necessary (if applicable) for the successful completion of the project.

Sub-Element (F): Cost-Per-Job (5 Points)

The extent to which the application documents that during the project period the proposed project will create new, permanent jobs through business opportunities for low-income residents and that the cost-per-job will not exceed $10,000. The cost-per-job is calculated by dividing the total amount of grant funds requested by the number of jobs to be created. For example, if the amount of grant funds requested is $500,000 and the number of jobs to be created is 100, the cost-per-job would be $5,000. In making calculations of cost-per-job, only jobs filled by low-income project participants may be counted.

Note that the maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $10,000 or less of JOLI requested funds. OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

Organizational Profiles—10 Points

Element III: Agency's Experience and Commitment in Program Area

The extent to which the applicant cites their organization's capability and relevant experience in developing and operating programs that deal with poverty problems similar to those to be addressed by the proposed project; demonstrates their organization's experience in collaborative programming and operations that involve evaluations and data collection; and identifies the organization's executive leadership and briefly describes their involvement in the proposed project and provides assurance of their commitment to its successful implementation. (6 Points.)

The extent to which the application includes documentation that briefly summarizes two similar projects undertaken by the applicant agency and the extent to which the stated and achieved performance targets, including permanent benefits to low-income populations, have been achieved. The application should note and justify the priority that this project will have within the agency, including the facilities and resources that it has available to carry it out. (4 Points)

Note that the maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.

Staff and Position Data—10 Points

Element IV: Staff Skills, Resources and Responsibilities

The extent to which the application identifies the individuals who will have the key responsibilities for managing the project, coordinating services and activities for participants and partners, and achieving performance targets. The focus should be on the qualifications, experience, capacity, and commitment to the program of the executive officials of the organization and the key staff persons who will administer and implement the project. The person identified as project director should have supervisory experience, experience in finance and business, and experience with the target population. Because this is a new project within an already-established agency, OCS expects that the key staff person(s) will be identified, if not hired, or that an estimated hiring time line for each individual will be provided. (5 Points)

The extent to which the application includes a resume of the third party evaluator, if identified or hired, or the minimum qualifications and position description for the third party evaluator, who must be a person with recognized evaluation skills who is organizationally distinct from and not under the control of the applicant. (See Element V: Project Evaluation, below, for a fuller discussion of evaluator qualifications.) (3 Points)

The extent to which the application includes the resumes or position descriptions of key staff in an appendix to the application. (2 Points)

Evaluation—10 Points

Element V: Project Evaluation

The extent to which the application includes a well thought through outline of an Evaluation Plan for the project over the full 3-year project period that explains how the applicant proposes to answer the key questions about the efficacy of the project such as (1) whether the project activities or interventions achieve the expected immediate outcomes; (2) why or why not (the process evaluation); (3) whether and to what extent the project achieved its stated goals; and (4) why or why not (the outcome evaluation). Together the process and outcome evaluations should answer the question: ''What did this program accomplish and why did it work/not work?'' (3 Points)

The extent to which the outline of the Evaluation Plan is consistent with the proposed project's design including: clearly identifying the key project assumptions about the target population and their needs; describing the proposed project activities, or interventions, that will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency; and identifying in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization and the community. (3 Points)

The extent to which the outline of the Evaluation Plan identifies the principal cause-and-effect relationships to be tested, demonstrates the applicant's understanding of the role and purpose of both process and outcome

evaluations, and provides for prompt reporting, concurrently with the semi-annual program progress reports, of lessons learned during the course of the project. (2 Points)

The extent to which the outline of the Evaluation Plan cites the identity and qualifications of the proposed independent third party evaluator (*i.e.*, a person or organization with recognized evaluation skills, that will be organizationally distinct from and not under the control of the applicant, and whose qualifications include successful experience in evaluating social service delivery programs and the planning and/or evaluation of programs designed to foster self-sufficiency in low-income populations). (2 Points)

Budget and Budget Justification—5 Points

Element VI: Budget Appropriateness and Reasonableness

The extent to which the application contains a detailed budget breakdown and a budget narrative, or explanatory budget information for each of the budget categories in the SF–424A, that presents a project period and requested amount that is commensurate with the level of effort necessary to accomplish the goals and objectives of the project, that presents an estimated cost to the government for the project that is reasonable in relation to the project's duration and to the anticipated results; and that includes a reasonable administrative cost for the project. (3 Points)

The extent to which the application demonstrates a firm commitment of resources (if applicable) to accomplish project purposes within the proposed time frame. (1 Point)

The extent to which the application budget include funds for travel by project directors and chief evaluators to attend two national evaluation workshops in Washington, DC. (1 Point)

2. Review and Selection Process: No grant award will be made under this announcement on the basis of an incomplete application.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff will use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but they will not be the only factors considered.

Priority will be given to applicants proposing to serve those areas containing the highest percentage of individuals receiving TANF under a State program, which is funded under Part A of Title IV of the Social Security Act and individuals whose income level does not exceed 100 percent of the official poverty line. Annual revisions of these poverty guidelines are normally published in the **Federal Register** in February or early March. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries; Congressional offices; by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; or by accessing the following Web site: (*http://aspe.os.dhhs.gov/poverty/index.shtml*).

Since ACF will be using non-Federal reviewers in the process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Approved but Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

VI. Award Administration Information

1. *Award Notices:* The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. *Administrative and National Policy Requirements:* Direct Federal grants, sub-award funds, or contracts under this JOLI Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the Equal Treatment for Faith-based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

45 CFR Part 74 or 45 CFR Part 92

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

3. *Reporting Requirements:* Grantees will be required to submit program progress and financial reports (SF–269 found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. Final programmatic and financial reports are due 90 days after the close of the project period.

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

The semi-annual program progress reports include a description of the grantee's major activities and accomplishments for the reporting period, any problems, significant findings and events, dissemination activities, and any activities the grantee may have planned for the next reporting period.

VII. Agency Contacts

Program Office Contact: Thom Campbell, Office of Community Services, Administration for Children and Families, OCS Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, Phone: 800–281–9519, E-mail: *ocsgrants@acf.hhs.gov.*

Grants Management Office Contact: Barbara Ziegler-Johnson, Office of Grants Management, Administration for Children and Families, OCS Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, Phone: 800–281–9519, E-mail: *ocsgrants@acf.hhs.gov.*

VIII. Other Information

Notice: Beginning with FY 2005, the Administration for Children and Families (ACF) will no longer publish

grant announcements in the **Federal Register**. Beginning October 1, 2005, applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov.* Applicants will also be able to find the complete text at *http://www.acf.hhs.gov/grants/index.html.*

Please reference Section IV.3 for details about acknowledgement of received applications.

Dated: July 13, 2005.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. 05–14193 Filed 7–19–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–1075] (formerly 99N–1075)

Quantitative Risk Assessment on the Public Health Impact of Vibrio parahaemolyticus in Raw Oysters; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing a public meeting to present the ''Quantitative Risk Assessment on the Public Health Impact of *Vibrio parahaemolyticus* in Raw Oysters.'' This public meeting is intended to provide clarification about the results of the risk assessment and information on how the risk assessment may be utilized. Stakeholders will have an opportunity to ask questions about the risk assessment. Questions may also be submitted in advance of the public meeting (see *Contact* section of this document). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the risk assessment that is being presented at this public meeting.

Date and Time: The meeting will be held on August 13, 2005, from 12 noon to 3 p.m.

Location: The meeting will be held at the Grand Hotel Marriot Resort, One Grand Blvd., Point Clear, AL 36564.

Contact: Melissa Ellwanger, Center for Food Safety and Applied Nutrition (HFS–417), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1401, FAX: 301–436–2599, e-mail: *mellwang@cfsan.fda.gov*.

Registration and Requests for Oral Presentation: Send registration information (including name, title, firm name, address, telephone, and fax number), and written materials to the contact person by August 10, 2005. Interested persons may present data, information, or views orally or in writing, on the issue. If you desire to make a formal oral presentation, you should notify the contact person before August 10, 2005, and be prepared to give a brief description of the general nature of the information you wish to present. Time allotted for each presentation may be limited.

If you need special accommodations due to a disability, please contact Melissa Ellwanger at least 7 days in advance of the meeting.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: July 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14294 Filed 7–18–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–1075] (formerly 99N–1075)

Quantitative Risk Assessment on the Public Health Impact of Pathogenic Vibrio parahaemolyticus in Raw Oysters; Risk Assessment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a risk assessment entitled ''Quantitative Risk Assessment on the Public Health Impact of Pathogenic *Vibrio parahaemolyticus* in Raw Oysters.'' The quantitative risk assessment will help the agency evaluate risk mitigation strategies and develop effective guidance for the industry. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public meeting to provide clarification about the results of the risk assessment and information about how the risk assessment may be utilized.

ADDRESSES: Submit written requests for single copies of the risk assessment document and CD–ROM of the model to Sherri Dennis, Center for Food Safety and Applied Nutrition (see **FOR FURTHER INFORMATION CONTACT**). Send one self-addressed label to assist that office in processing your request. You also may request a copy of the risk assessment document and model by fayour name and mailing address with the name of the document you are requesting to the CFSAN Outreach and Information Center at 1–877–366–3322. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this document.

A copy of the risk assessment document may be reviewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sherri B. Dennis, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1903.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2001 (66 FR 5517), FDA announced the availability of a draft risk assessment on the relationship between *Vibrio parahaemolyticus* in raw molluscan shellfish, specifically raw oysters, and human health. A public meeting was held on March 20, 2001 (66 FR 13544, March 6, 2001), to receive comments on the technical aspects of the draft risk assessment. Interested persons were given until March 20, 2001, with extensions to May 21, 2001 (66 FR 13546, March 6, 2001), and to July 18, 2001 (66 FR 33101, June 20, 2001), to comment on the draft risk assessment. Nine letters, containing one or more comments, were received in response to the draft risk assessment. The risk assessment has been revised in response to the public comments, newly available data, and updated modeling techniques. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public meeting to provide clarification about the results of the risk assessment and information about how the risk assessment may be utilized.

II. Risk Assessment

The purpose of the quantitative risk assessment is to examine systematically available scientific data and information to estimate the risk of illness associated with consumption of raw oysters that contain pathogenic *V. parahaemolyticus*. This examination of the current science and the models

developed from it are among the tools available to FDA to aid in the evaluation of risk mitigation strategies and in the formulation of effective guidance for the industry. The risk assessment focused on raw oysters because that is the food in the United States predominately linked to illness from *V. parahaemolyticus* outbreaks since 1997. This risk assessment is a quantitative analysis in which the levels of pathogen in oysters were estimated beginning with harvest of the oysters through post-harvest handling, processing, and storage to predict exposure from consumption of raw oysters. The likelihood of illness following exposure to pathogenic *V. parahaemolyticus* from consumption of raw oysters was determined for different geographical areas and for various times of the year. The baseline model was used to develop ''what-if'' scenarios to evaluate the likely impact of potential intervention scenarios on the exposure to pathogenic *V. parahaemolyticus*. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public meeting to provide clarification about the results of the risk assessment and information about how the risk assessment may be utilized.

The risk assessment follows the framework recommended both by the National Academy of Sciences and the Codex Alimentarius Commission. This structured framework involves the following steps:

- *Hazard Identification*. The review of data and information on health effects (e.g., gastroenteritis and septicemia) associated with consumption of raw oysters containing pathogenic *V. parahaemolyticus*.
- *Hazard Characterization/Dose-Response*. Characterization of the relationship between *V. parahaemolyticus* exposure level (dose) and probability and severity of illness (response) using data from clinical trials and epidemiological surveys. Anyone exposed to *V. parahaemolyticus* can become infected and develop gastroenteritis; however, individuals with concurrent underlying chronic medical conditions have a greater probability of developing septicemia.
- *Exposure Assessment*. The determination of the likelihood and level of exposure to *V. parahaemolyticus* from consumption of raw oysters using data on prevalence, water and air temperature, growth and survival of *V. parahaemolyticus*, oyster landings, and consumption.
- *Risk Characterization*. The integration of the exposure and dose-response data to estimate both the risk to the public heath and the uncertainty associated with this estimate. The risk assessment provides estimates of the following: (1) The predicted illness burden as the risk of an individual becoming ill when they consume a single serving of oysters, (2) the predicted number of illnesses (gastroenteritis) in the United States each year, and (3) the predicted number of cases of gastroenteritis that progress to septicemia.

The results of the risk assessment identified the following several significant factors that contribute to the probability of illness: (1) Levels of total *V. parahaemolyticus* in oysters at time of harvest, (2) harvesting and handling practices that allow growth of *V. parahaemolyticus* in oysters after harvest, and (3) mitigations that reduce levels of *V. parahaemolyticus* in oysters post-harvest.

III. Electronic Access

The risk assessment document is available electronically at *www.cfsan.fda.gov*.

Dated: July 11, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14293 Filed 7–18–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ALONSO, TERESA HIALEAH, FL	7/20/05
BOGGS, CHRISTINA NEWPORT, WA	7/20/05
BRACKETT, AMOUEL UNION, SC	7/20/05
BRIAR CREST NURSING HOME, INC GREENWICH, CT	7/20/05
CARDELLE, CLARA MIAMI, FL	7/20/05
CARNET, GUILLERMO MIAMI, FL	7/20/05
COMMUNITY INTEGRATION ASSOCIATES, INC CAMPBELL, NY	7/20/05
COOKE, JEFFERY ROCHESTER HILLS, MI	7/20/05
COX, KATHLEEN KINGSTON, WA	7/20/05
CRAVEN, ALBERTA COLUMBUS, OH	7/20/05
CROOKS, LYNN GOSHEN, OH	7/20/05
DAVIS, MARK FAIRTON, NJ	7/20/05
DONETS, NISON BAYSIDE, WI	3/28/05
EISENBERG, LESTER SOUTHOLD, NY	7/20/05
EKONG, AFFIONG RICHARDSON, TX	7/20/05
EKONG, PATRICK SEAGOVILLE, TX	7/20/05
FERRER, SONIA MIAMI, FL	7/20/05
FLOYD, LINDA KIMBOLTON, OH	7/20/05
FOJON, LILLIAN MIAMI, FL	7/20/05
GEZALYAN, SARKIS GLENDALE, CA	7/20/05
GOMEZ, MARIO MIAMI, FL	7/20/05
GOWIN, AMY NORFOLK, VA	7/20/05
GREENBAUM, MARK NEW ROCHELLE, NY	7/20/05
GRIGORYAN, KONSTANTIN ALTADENA, CA	7/20/05
GRIMES, LUMESHIA COLUMBIA, SC	7/20/05
HARTER, ANA MIAMI, FL	7/20/05
HERRERA, GILBERTO MIAMI, FL	7/20/05
HOWARD, KYLE LEBANON, OH	7/20/05
JACKSON, BETHEARL SAN DIEGO, CA	7/20/05
JAGO, ROBERT JACKSONVILLE, OH	7/20/05
JAGO, SHARON JACKSONVILLE, OH	7/20/05
JENKINS, JOHN CAMPBELL, NY	7/20/05
JILES, E TEXARKANA, TX	7/20/05
JONES, NICOLE	7/20/05

Subject, city, state	Effective date
VAUGHN, WA	
JORGE, JESUS ..... MIAMI, FL	7/20/05
KLANG, DAVID ..... PALM DESERT, CA	7/20/05
LA CRUZ, JOSEPH ..... HALLANDALE, FL	7/20/05
LARIN, LUPE ..... ARLETA, CA	7/20/05
LEE, FRANCINE ..... SACRAMENTO, CA	7/20/05
LLORENTE, EVA ..... MIAMI, FL	7/20/05
LORENZO, OSVALDO ..... MIAMI, FL	7/20/05
LOWRIGHT, MARGARET ..... SELINSGROVE, PA	7/20/05
LOZANO-ARROYO, MITCHELL ..... CABO ROJO, PR	7/20/05
MANVELYAN, MKRTICH ..... N HOLLYWOOD, CA	7/20/05
MARRERO, EDUARDO ..... PENSACOLA, FL	7/20/05
MARTIN, ANNA ..... MONTPELIER, VT	7/20/05
MAYHUGH, DEBRA ..... BREMEN, OH	7/20/05
MCCLELLAN, MONTY ..... MANCHESTER, KY	7/20/05
MELENDEZ-COLON, JOSE ..... SAN JUAN, PR	7/20/05
MESA, CARLOS ..... MIAMI, FL	7/20/05
MESA, KENIA ..... HIALEAH, FL	7/20/05
MIZRAHIE, REGINA ..... LOS ANGELES, CA	7/20/05
MONTANO-ROY, LEAH ..... PINELLAS PARK, FL	7/20/05
MORALES, ORBELINA ..... LA MIRADA, CA	7/20/05
NASHIKYAN, SUSANNA ..... LOS ANGELES, CA	7/20/05
NEGRIN, VIRIDIANA ..... HIALEAH, FL	7/20/05
NEMIROVSKIY, IGOR ..... MEQUON, WI	7/20/05
NIXON, CELESTE ..... TACOMA, WA	7/20/05
OLIVEROS, EDMUND ..... WHITE PLAINS, NY	7/20/05
OMER, TARIG ..... LANHAM, MD	7/20/05
OSTIEMER, ROLANO ..... MIAMI, FL	7/20/05
PARKER, LESTER ..... PHOENIX, AZ	7/20/05
PARKS, MELISSA ..... WYNONA, OK	7/20/05
PATEL, NARENDRA ..... E ELMHURST, NY	7/20/05
PICKETT, KIMBERLY ..... IDAHO FALLS, ID	7/20/05
PIEDRA, OSVALDO ..... MIAMI, FL	7/20/05
QUEVEDO, JOSE ..... FONTANA, CA	7/20/05
RAVELO, CARLOS ..... MIAMA, FL	7/20/05
REGALBUTO, ALEXANDER .... CONGERS, NY	7/20/05
REGIONAL MEDICAL TRANSPORT, INC	7/20/05
GLENWOOD, AR	
REILLY, JANE ..... MASSAPEQUA, NY	7/20/05
RESTREPO, JORGE ..... MIAMI, FL	7/20/05
REYNOLDS, PEGGY ..... ROCK HILL, SC	7/20/05
RIEDEL, DANIEL ..... CARLSBAD, CA	7/20/05
RODRIGUEZ, CECILIA ..... MIAMI LAKES, FL	7/20/05
ROTHBART, JANET ..... SEMINOLE, FL	7/20/05
SARABI, JOAN ..... FRANKLIN, TN	7/20/05
SARDARIANI, HENRIK ..... BURBANK, CA	7/20/05
SCHNEIDER, MYLES ..... SOUTH0LD, NY	7/20/05
SHUKH, HELEN ..... MILWAUKEE, WI	7/20/05
SOTOLONGO, MIRTA ..... MIAMI, FL	7/20/05
SPAID, MARK ..... GLOVERSVILLE, NY	7/20/05
STARKS, EDWARD ..... INGLEWOOD, CA	7/20/05
TREYNKER, ALEKSANDR ..... CANOGA PARK, CA	7/20/05
UNITED MEDICAL CORPORATION ..... COLUMBUS, OH	7/20/05
UPHILL MEDICAL ASSOCIATES ..... ONTARIO L6W2X7,	9/8/04
WADDINGTON, CRYSTAL ..... ABILENE, TX	7/20/05
YU, HENRY ..... MAHASSET, NY	7/20/05
FELONY CONVICTION FOR HEALTH CARE FRAUD	
ALM, ROBERT ..... S PLYMOUTH, NY	7/20/05
BARBAY, MARY ..... GROVES, TX	7/20/05
BEST, ALEXANDER ..... FORT DIX, NJ	7/20/05
BIZZELL, CURTIS ..... TEMPE, AZ	7/20/05
DALAL, NARENDRA ..... UNION, NJ	7/20/05
DIAZ, ROSIE ..... SAN JOSE, CA	7/20/05
FISH, TRACEY ..... FARMINGTON, ME	11/20/03
GILDING, JENAH ..... COLORADO SPRINGS, CO	7/20/05
HALL, MELISSA ..... CHAMPAIGN, IL	7/20/05
HIGGINS, MARTIN ..... NUTLEY, NJ	7/20/05
HILL, LAURIE ..... ONTARIO L0NIK0,	09/8/04
HULETT, PAMELA ..... HOUSTON, TX	7/20/05
LEVSKY, ANATOLY ..... LOS ANGELES, CA	7/20/05
PIEDRA, ARTURO ..... AVENAL, CA	7/20/05
SILVA, MELINDA ..... MANCHESTER, NH	7/20/05
SIMS-MOBLEY, SHARMAINE	7/20/05
DADE CITY, FL	
STAKELY, JAMES ..... SAN DIEGO, CA	7/20/05
STRUSZ, ROBERT ..... OAKLAND, CA	7/20/05
THOMPSON, KARRIE ..... MERCED, CA	7/20/05
VASQUEZ-RUIZ, FELIX ..... CHICAGO, IL	7/20/05
WINCHESTER, RICHARD ..... CATSKILL, NY	7/20/05
YUHASZ, JACKIE ..... HUNTINGTON, WV	7/20/05
ZAMLOOT, PHILIP ..... NEW YORK, NJ	7/20/05
FELONY CONTROL SUBSTANCE CONVICTION	
ARTHUR, FRANCISCA ..... PORT ANGELES, WA	7/20/05
BAUER, JOSEPH ..... SAINT PETERSBURG, FL	7/20/05
BOOKER, TAMMIE ..... DENVER, CO	7/20/05
CASE, BRAIN ..... BLOOMFIELD, KY	7/20/05
DONOVAN, MARY ..... WAXAHACHIE, TX	7/20/05
ENGLISH, PATRICIA ..... PAINESVILLE, OH	7/20/05
HENSLEY, SHANE ..... JOHNSON CITY, TN	7/20/05
JUDON, CHEMITA ..... ORLANDO, FL	7/20/05
KEARNS, JOYCE ..... ATOKA, OK	7/20/05
LADD, CAROLINE ..... NIXA, MO	7/20/05
LEWIS, TAMELA ..... SANDY HOOK, KY	7/20/05
MARTENS, SHAUNE ..... NASHVILE, TN	7/20/05
NYMAN, DAVID ..... TUCSON, AZ	7/20/05
PALMER, CINDY ..... MURRAY, UT	7/20/05
POTTS, NICKI ..... ALBUQUERQUE, NM	7/20/05
SANFORD, RAMONA ..... BETHEL, AK	7/20/05
URTON, STEFANIE ..... CORDOVA, AK	7/20/05
PATIENT ABUSE/NEGLECT CONVICTIONS	
BELL, JAMES ..... SUQUAMISH, WA	7/20/05
BROOKS, LATOSHA ..... TOWSON, MD	7/20/05
BROWN, KESHA ..... WATER VALLEY, MS	7/20/05
DAMASO, LORILEE ..... HAUULA, HI	7/20/05
DAVISON, GEORGE ..... BROOKLYN, NY	7/20/05
EMERICK, RANDALL ..... STATE FARM, VA	7/20/05
GAMOTIN, VINCENTE ..... LOS ANGELES, CA	7/20/05
GUY, SHALANDA ..... MEMPHIS, TN	7/20/05
HILLCREST HEALTH CARE CENTER	5/11/05

Subject, city, state	Effective date
UNCASVILLE, CT	
HOHL, DONNA	7/20/05
VANDALIA, MO	
HOPPER, CRYSTAL	7/20/05
FOREST GROVE, OR	
JACKSON, RAYSHON	7/20/05
MILWAUKEE, WI	
LAOH, BENNY	7/20/05
SHELTON, WA	
LAURIE, JASON	7/20/05
CARSON CITY, NV	
LAURIER, DIANNE	7/20/05
SHELTON, WA	
LEDESMA, VICTORIA	7/20/05
ROSEVILLE, CA	
LEE, TERRI	7/20/05
BALTIMORE, MD	
LOPEZ, BRANDICE	7/20/05
CARMICHAEL, CA	
LUNESMAN, SANDRA	7/20/05
MONTICELLO, IA	
MATTHEWS, THOMASINA	7/20/05
PIKESVILLE, MD	
MCMASTERS, LAURA	7/20/05
TECUMSEH, OK	
MILLER, GERRENE	7/20/05
MILL HALL, PA	
MORTON, JOANN	7/20/05
ANADARKO, OK	
NOOR, FARID	7/20/05
MEDFORD, NJ	
OROZCO, CONSUELO	7/20/05
OAK VIEW, CA	
PETERSON, MELISSA	7/20/05
CHEROKEE, IA	
SAJJAD, AYSHA	7/20/05
BARTON, VT	
SANNI, ELIZABETH	7/20/05
NORTH PROVIDENCE, RI	
SHACKLEFORD, GWEN-DOLYN	7/20/05
DAYTON, OH	
SIMPSON, LESLIE	7/20/05
BRONX, NY	
THOMAS, TRESHA	7/20/05
VILLE PLATTE, LA	
TINSLEY, ANGELA	7/20/05
SUSANVILLE, CA	
UGWU, CHARLES	7/20/05
OKLAHOMA CITY, OK	
VIELMA, LEANDRO	7/20/05
KISSIMMEE, FL	
WHEELER, AUDREY	7/20/05
WATERFORD, ME	
WHITWORTH, BEVERLY	7/20/05
CARNEGIE, OK	

CONVICTION-OBSTRUCTION OF AN INVESTIGATION

JOHNSON, LENA	7/20/05
HOUMA, LA	

LICENSE REVOCATION/SUSPENSION/SURRENDERED

ABEL, PHIL	7/20/05
ROY, UT	
AMEN, CHRISTINE	7/20/05
MANTECA, CA	
ANDERSON, JENNIE	7/20/05
BROCKTON, MA	
ANDREWS, RALEIGH	7/20/05
MONTICELLO, KY	
BAROFF, DAVID	7/20/05
GIRARD, OH	
BEAUCHAMP, MAVIS	7/20/05
HEBRON, ND	
BEISWANGER, JILL	7/20/05
NEW ORLEANS, LA	
BLAIR, DAVID	7/20/05
AVONDALE, AZ	
BLANKENSHIP, LINDA	7/20/05
DECATUR, AL	
BOSWELL, DONNA	7/20/05
DE LEON, TX	
BOUDREAUX, DOROTHY	7/20/05
HUMBLE, TX	
BOWERS, AMY	7/20/05
DALHART, TX	
BREDEMEIER, HENRY	7/20/05
LOMBARD, IL	
BRUGGEMAN, JAMES	7/20/05
CLEAR LAKE, IA	
BRYANT, ANGELA	7/20/05
LOVES PARK, IL	
BUCK, NADENA	7/20/05
MURRAY, UT	
BUGOS, ROSEMARY	7/20/05
BUENA PARK, CA	
BUSH, LISA	7/20/05
ETHELSVILLE, AL	
CARNEY, NANETTE	7/20/05
VIDALIA, LA	
CASEY, NOLA	7/20/05
CADDO MILLS, TX	
COBBS, FREDERICK	7/20/05
WAKE FOREST, NC	
COLEMAN, MARCIA	7/20/05
LAKEWOOD, OH	
COLSHAN, STACY	7/20/05
MAPLETON, IA	
CORDELL, CRYSTAL	7/20/05
ELIZABETHTOWN, TN	
CORNISH, CHRISTY	7/20/05
BENTON, AR	
CROSBY, CHARLES	7/20/05
ORLANDO, FL	
DALLOLIO, DENISE	7/20/05
RUPERT, ID	
DAVENPORT, KIMBERLY	7/20/05
WARWICK, RI	
DAWSON, NANCY	7/20/05
UNIONTOWN, OH	
DICKERSON, DANA	7/20/05
NEW HEBRON, MS	
DOHERTY, ERIN	7/20/05
CHARLOTTE, NC	
DOVE, RICHARD	7/20/05
NEWTON, KS	
ECHOLS, EVERETT	7/20/05
SOUTHERN PINES, NC	
EDWARDS, LESA	7/20/05
MEAD, OK	
FIDALGO, CATHERINE	7/20/05
NEW BEDFORD, MA	
FREEMAN, JANET	7/20/05
KNOXVILLE, TN	
FRISCH, JULIE	7/20/05
LAKE FOREST, CA	
GALE, LORETA	7/20/05
NATIONAL CITY, CA	
GARNETT, HAZEL	7/20/05
BEACON, NY	
GRIEGO, MAHRI	7/20/05
BISHOP, CA	
HABERMAN, JENNIFER	7/20/05
DURHAM, NC	
HALE, KIMBERLY	7/20/05
MOREHEAD, KY	
HALL, SHARON	7/20/05
TWAIN HARTE, CA	
HALL, YVONNE	7/20/05
MERCED, CA	
HAMILTON, DIANE	7/20/05
MOUNT JULIET, TN	
HARRISON, SANDY	7/20/05
LAGRANGE, GA	
HARTER, SUSAN	7/20/05
TUCSON, AZ	
HARTWELL, VICTORIA	7/20/05
LEWSTON, ID	
HERNANDEZ, VARINIA	4/20/05
PITTSBURG, CA	
HILL, ROGER	7/20/05
KNOXVILLE, TN	
HOCHSPRUNG, CAROLYN	7/20/05
WEST FARGO, ND	
HOLBROOK, JANE	7/20/05
BOISE, ID	
HOLMAN, THELON	7/20/05
CHAPEL HILL, NC	
HURLEY, CHARLES	7/20/05
CHICOPEE, MA	
INNES, GEORGE	7/20/05
FAYETTEVILLE, NY	
IRVING, JENNIFER	7/20/05
COUNCIL BLUFFS, IA	
JAMES, GLORIA	7/20/05
JERSEY CITY, NJ	
JENSEN, MEGAN	7/20/05
ORLAND, CA	
JOHNSON, SHERRY	7/20/05
BOISE, ID	
JONES, ILONA	7/20/05
TUCSON, AZ	
JONES, ROBBIE	7/20/05
BYHALIA, MS	
KELLY, DENNIS	7/20/05
MARKHAM, IL	
KELLY, PATRICK	7/20/05
BASTROP, TX	
KINDELSPIRE, KATHLEEN	7/20/05
MESA, AZ	
KLEIN, CARL	7/20/05
KNOXVILLE, TN	
KNIGHT, ROBIN	7/20/05
BLOUNTSVILLE, AL	
LAVALLO, JULIA	7/20/05
NEW PARIS, OH	
LEE, DIANA	7/20/05
TWIN FALLS, ID	
LEWIS, WANDA	7/20/05
DENVER, CO	
LINDSEY, DEBBIE	7/20/05
TECUMSEH, OK	
LOVIER, PATRICIA	7/20/05
GRANDVIEW, MO	
LUCK, DIANNE	7/20/05
GREAT POND, ME	
MADERE, ANNA	7/20/05
LULING, LA	
MARTIN, ROSALIND	7/20/05
CHICAGO, IL	
MARTIN, SHELLY	7/20/05
HENDERSON, KY	
MARTINEAU, WADE	7/20/05
SALT LAKE CITY, UT	
MASNEY, RICHARD	7/20/05
ROCKY MOUNT, NC	
MATUTE, PATRICIA	7/20/05

Subject, city, state	Effective date
RESEDA, CA	
MCCLURE, VICKIE	7/20/05
OVERTON, TX	
MCKINNEY, MARTHA	7/20/05
GARLAND, TX	
MCPEAK, CATHERINE	7/20/05
AVERY, TX	
MENDOZA, CHARLES	7/20/05
VALLEJO, CA	
MENDOZA, DAVID	7/20/05
TUCSON, AZ	
MERCHANT-KEOSATHIT, LEE ANN	7/20/05
ST PETERSBURG, FL	
MOODY, JOLENE	7/20/05
SOUTH JORDAN, UT	
MORRIS, KENYA	7/20/05
EL CAJON, CA	
O'DONOHOE, BARBARA	7/20/05
CEDAR RAPIDS, IA	
OAKMAN, RANDALL	7/20/05
MOUNT ZION, IL	
OLF, VICKIE	7/20/05
INDEPENDENCE, MO	
OUTLAW, TERESA	7/20/05
MT OLIVE, NC	
PABLO, JENNIFER	7/20/05
PHOENIX, AZ	
PARRA, ANNA	7/20/05
TUCSON, AZ	
PARSLEY, JAMES	7/20/05
WHEELERSBURG, OH	
PARSONS, BETH	7/20/05
FORT WAYNE, IN	
PATTEN, JANICE	7/20/05
CENTENNIAL, CO	
PAWLOWSKI, JOAN	7/20/05
BURNHAM, IL	
PAYNE, MELODY	7/20/05
SECTION, AL	
PIATT, SANDRA	7/20/05
MURRAY, UT	
POLAND, WAYNE	7/20/05
N CONWAY, NH	
PONWITH, PAULA	7/20/05
ARVADA, CO	
QUICHOCHO, RICHARD	7/20/05
OLYMPIA, WA	
RANDALL, BETHANY	7/20/05
SKOWHEGAN, ME	
REID, YOLANDA	7/20/05
TUCSON, AZ	
REPKO, LINDA	7/20/05
JESSUP, PA	
REYNOLDS, PATRICIA	7/20/05
CHARLOTTE, NC	
RIZZO, MICHELLE	7/20/05
SCOTTSDALE, AZ	
ROGERS, ANNETTE	7/20/05
LOMPOC, CA	
ROMERO, EMMA	7/20/05
MARENO VALLEY, CA	
RUDY, ANDREW	7/20/05
MERRITT ISLAND, FL	
RUMBOLZ, SARA	7/20/05
GILBERT, AZ	
RYGIEL, KATARZYNA	7/20/05
SAN DIEGO, CA	
SCHALL, TRACY	7/20/05
BUCKEYE, AZ	
SCHROYER, GREGORY	7/20/05
FAIRVIEW HEIGHTS, IL	
SEEFELDT, REBECCA	7/20/05
PHOENIX, AZ	
SHELBURNE, KRISTI	7/20/05
LEBANON, IN	
SHOEMAKER, MICHELLE	7/20/05
HAMILTON, OH	
SIMMONS, LISA	7/20/05
ROCKFORD, IL	
SMITH, DEBORAH	7/20/05
SAN ANTONIO, TX	
SMITH, JAMIE	7/20/05
BETHANY, OK	
SMITH, MICHAEL	7/20/05
GREENVILLE, NC	
SMITH, NANCY	7/20/05
SUPPLY, NC	
SMITH, RICHARD	7/20/05
RIVERHEAD, NY	
SOOKHU, LLOYD	7/20/05
DIX HILLS, NY	
SPARLING, KAREN	7/20/05
AMARILLO, TX	
SPOONER, COLLEEN	7/20/05
COLORADO SPRINGS, CO	
STANLEY, JENNIFER	7/20/05
CLEVELAND, TX	
TARLTON, NORA	7/20/05
DECATUR, AL	
TAYLOR, JOHN	7/20/05
VASS, NC	
THOMAS, SUSAN	7/20/05
OCALA, FL	
TONUBBEE, KIMBERLY	7/20/05
CARROLLTON, TX	
TOWLES, TRACY	7/20/05
NICHOLASVILLE, KY	
TRUE, ROBERT	7/20/05
CLARKSDALE, MS	
TURAN, ROXANNE	7/20/05
SAUCIER, MS	
TURNER, BETTY	7/20/05
TUCSON, AZ	
TURNER-GAINES, WINNIFRED	7/20/05
MONROE, LA	
VALENTINO, NANCY	7/20/05
HEMET, CA	
VENECHANOS, JACQUELINE	7/20/05
CHARLESTOWN, RI	
VIVEROS, CHRISTOPHER	7/20/05
TEHACHAPI, CA	
WAITLEY, TIMOTHY	7/20/05
GLENDALE, AZ	
WATSON, KELLY	7/20/05
OKLAHOMA CITY, OK	
WEBB, BONNIE	7/20/05
SWEET WATER, AL	
WEISE, ELAINE	7/20/05
GLENDALE, AZ	
WHITAKER, REGINA	7/20/05
PEORIA, IL	
WHITE, KELLY	7/20/05
CULLMAN, AL	
WHITE, VICKIE	7/20/05
RANCHO CUCAMONGA, CA	
WHITLEY, ANGELIA	7/20/05
ROARING RIVER, NC	
WILBANKS, NANCY	7/20/05
ASHLAND, MS	
WILLIAMS, ELIZABETH	7/20/05
GILBERT, AZ	
WILLSON, JENNIFER	7/20/05
LYNDON CENTER, VT	
WISE, THOMAS	7/20/05
ASHWAY, RI	
WYLEY, MARQUITA	7/20/05
TOLEDO, OH	
YANKURA, JOSEPH	7/20/05
FREEPORT, NY	
ZUCCO, MICHAEL	7/20/05
PITTSBURGH, PA	
ZUZELSKI, KAREN	7/20/05
LOVELAND, CO	
OWNED/CONTROLLED BY CONVICTED ENTITIES	
ALROD MEDICAL EQUIPMENT CORP	7/20/05
MIAMI, FL	
BRIAN H JENKINS, D S, P A	7/20/05
KANSAS CITY, MO	
CARES R US, LTD	3/8/05
BAYSIDE, WI	
CHARLES J CROSBY, D O, P A	7/20/05
WINTER PARK, FL	
CROSBY ADVANCED MEDICAL SYSTEMS, INC	7/20/05
ORLANDO, FL	
K E S MEDICAL SUPPLIES CORP	7/20/05
HIALEAH, FL	
STANBRIDGE CHIROPRACTIC	7/20/05
WHITTIER, CA	
STAR B REST PERSONAL CARE HOME	7/20/05
COLUMBUS, MS	
DEFAULT ON HEAL LOAN	
CASTALINE, PERREN	7/20/05
CANYON COUNTRY, CA	
JOHNSON, TIMOTHY	7/20/05
CHISAGO CITY, MN	
LENT, ROSELLA	7/20/05
NAHANT, MA	
OWNERS OF EXCLUDED ENTITIES	
JENKINS, ELIZABETH	7/20/05
CAMPBELL, NY	
SHARMA, RENU	4/5/04
KALAMAZOO, MI	

Dated: July 12, 2005.

Maureen Byer,

Acting Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05–14221 Filed 7–19–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0052]

Office of Research and Development; Proposed Federally Funded Research and Development Center; Notice No. 3

AGENCY: Office of National Laboratories, Directorate of Science and Technology, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) expects to sponsor a Federally Funded Research and Development Center (FFRDC) to address the need for scientific research to better anticipate, prevent, and mitigate the consequences of biological attacks. The proposed FFRDC will be the National Biodefense Analysis and Countermeasures Center (NBACC) which is a critical component in the overarching Homeland Security national biodefense complex. The NBACC will both coordinate biodefense research activities among various Federal agencies and to execute its own research plan. Also required will be technical and program management capabilities to facilitate operation of the NBACC facility. This is the third of three notices which must be published over a 90 day period in order to advise the public of the agency's intention to sponsor an FFRDC.

DATES: The agency must receive comments on or before August 4, 2005.

ADDRESSES: Comments must be identified by DHS–2005–0052 and may be submitted 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: *James.Johnson2@dhs.gov* and send copy to Project Officer: *Mary.Rico@amedd.army.mil*. Include docket number DHS–2005–0052 in the subject line of the message.
- Mail to: United States Army Medical Research Acquisition Activity (USAMRAA), Attn: Mary C. Rico, 820 Chandler Street, Ft. Detrick, Maryland 21702. Mail Copy to: Department of Homeland Security, Attn: Science and Technology Directorate, James V. Johnson, (202) 254–6098, Washington DC 20528.

Docket: For access to the docket to read the 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*.

FOR FURTHER INFORMATION CONTACT: Mary C. Rico via e-mail at *Mary.Rico@amedd.army.mil*.

SUPPLEMENTARY INFORMATION: The FFRDC would be established under the authority of Section 305 of the Homeland Security Act of 2002, Pub. L. 107–296. Pursuant to this section, the Secretary of Homeland Security, ''acting through the Under Secretary for Science and Technology, shall have the authority to establish * * * 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act * * *.''

This notice is provided pursuant to 5.205(b) of the Federal Acquisition Regulations (FAR), 48 CFR 5.205(b), to enable interested members of the public to provide comments to DHS on this proposed action. The potential FFRDC procurement will involve a Request for Proposals shortly after the agency has reviewed any comments received on this and the two prior notices. Upon request, a copy of the Request for Proposals, including the scope of work for the proposed FFRDC, will be provided to any interested party or parties. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

This also constitutes preliminary notice pursuant to section 308(c)(3) of the Homeland Security Act of 2002 that DHS may establish a headquarters laboratory to perform the functions envisioned by the NBACC. As required under section 308(c)(3)(A) and (B) of the Homeland Security Act, should the Secretary choose to establish a headquarters laboratory, he will establish criteria for the selection of that laboratory in consultation with the National Academy of Sciences and other agencies and experts. The criteria so established will be published in the **Federal Register**.

Further background of this potential establishment of the proposed FFRDC can be found out at the USAMRAA Web site, *http://www.usamraa.army.mil*.

Dated: July 15, 2005.

Robert Hooks,

Deputy Director, Office of Research and Development, Department of Homeland Security.

[FR Doc. 05–14264 Filed 7–19–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21723]

Environmental Equivalency Evaluation Index: Methodology To Assess the Oil Outflow Performance of Alternative Designs to the Double Hull Oil Tanker

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of an Environmental Equivalency Evaluation Index, which establishes a methodology to assess the oil outflow performance of alternative designs to the double hull oil tanker. This Environmental Equivalency Evaluation Index has been established in accordance with Section 705 of the Coast Guard and Maritime Transportation Act of 2004.

ADDRESSES: Documents mentioned in this notice as being available in the docket are part of public docket USCG–2005–21723, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact James Person, Coast Guard Office of Design and Engineering Standards, by telephone at 202–267–2988 or via e-mail at *jperson@comdt.uscg.mil*. If you have questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, by telephone at 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background

Section 705 of the Coast Guard and Maritime Transportation Act of 2004 amended Section 4115(e)(3) of the Oil Pollution Act of 1990 (46 U.S.C. 3703a note) to read as follows: ''(3) No later than one year after the date of enactment of the Coast Guard and Maritime Transportation Act of 2004, the Secretary shall, taking into account the recommendations contained in the report by the Marine Board of the National Research Council entitled 'Environmental Performance of Tanker Design in Collision and Grounding' and dated 2001, establish and publish an environmental equivalency evaluation index (including the methodology to

develop that index) to assess overall outflow performance due to collisions and groundings for double hull tank vessels and alternative hull designs.''

Environmental Equivalency Evalution Index

In accordance with the authority delegated from the Secretary, the Coast Guard has established the Environmental Equivalency Evaluation Index as directed. It is available on the Internet at *http://www.uscg.mil/hq/g-m/mse/mse2-dh-alt-eval-index.pdf*, and in the docket. To view documents in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number.

Dated: July 12, 2005.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 05–14265 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. DHS–2005–0051]

Notice of Revised Agenda and Partial Closure for the July 27, 2005, Meeting of the President's National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of partially closed meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Wednesday, July 27, 2005, from 2 p.m. until 3 p.m. The meeting will take place via teleconference and will be partially closed to the public. For access to the conference bridge and meeting materials, interested members of the public should contact Ms. Elizabeth Hart at (703) 289–5948, or by e-mail at *hart_elizabeth@bah.com* by 5 p.m. on Monday, July 25, 2005.

The NSTAC advises the President of the United States on issues and problems related to implementing national security and emergency preparedness (NS/EP) telecommunications policy. Between 2 p.m. and 2:30 p.m. the members will discuss the NSTAC work plan for the coming year and the activities of two NSTAC task forces. This portion of the meeting remains open to the public.

Basis for Closure

Notice of the July 27th meeting of the NSTAC was submitted for publication in the **Federal Register** on July 7, 2005, and published on July 12, 2005 (70 FR 40052). Subsequent to the July 7 terrorist attacks in London, however, the NSTAC asked Robert B. Stephan, Assistant Secretary for Infrastructure Protection, Department of Homeland Security (Department), to discuss the attacks during the July 27 NSTAC meeting. This topic will be incorporated into the discussions of Exercise Pinnacle and the National Infrastructure Protection Plan (NIPP), items which have been on the agenda since notice of this meeting appeared in the **Federal Register** on July 12, 2003. The combined discussion of the London attacks, Exercise Pinnacle, and the NIPP will occur between 2:30 and 3 p.m. and will likely involve sensitive information on the release of which would likely frustrate the Department's ability to implement the NIPP, safeguard critical facilities, and implement response and recovery activities. Accordingly, the Department has determined that this portion of the meeting will be closed to the public.

Notice of the partial closure of this meeting is given pursuant to 41 CFR 102–3.150 which allows such notice within 15 calendar days of a meeting due to exceptional circumstances. Given the timing of the London attacks, earlier notice of this agenda change was not possible.

FOR FURTHER INFORMATION CONTACT: Ms. Alberta Ross, Industry Operations Branch at (703) 235–5526, e-mail: *Alberta.Ross@dhs.gov*, or write the Deputy Manager, National Communications System, Department of Homeland Security, IAIP/NCS/N5, Washington, DC 20528-mail stop #8510.

SUPPLEMENTARY INFORMATION: *Public Comments:* You may submit comments for the public portion of this meeting, identified by DHS–2005–0051, by *one* of the following methods:

- *EPA Federal Partner EDOCKET Web Site: http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: NSTAC@dhs.gov.* When submitting comments electronically, please include DHS–2005–0051 in the subject line of the message.
- *Mail:* Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC 20529. To ensure proper handling, please reference DHS–2005–0051 on your correspondence. This mailing address may also be used for paper, disk or CD–ROM submissions.

All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided. For access to the docket, or 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.*

Dated: July 15, 2005.

Peter M. Fonash,

Deputy Manager, National Communications System.

[FR Doc. 05–14442 Filed 7–18–05; 2:57 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–08]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Acting Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Construction Complaint—Request for Financial Assistance.

OMB Control Number, if applicable: 2502–0047.

Description of the need for the information and proposed use: There is a need for HUD to know defects in new construction. The HUD form 92556 is used to identify the items of complaint in order to help the homeowner obtain correction. The information collection is also used to identify builders not conforming to applicable standards, and to determine eligibility for financial assistance.

Agency form numbers, if applicable: HUD–92556.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 5,000 generating approximately 5,000 annual responses, frequency of response is on occasion, the estimated time needed to prepare each response is 30 minutes, and the estimated annual burden hours requested is 2,500.

Status of the proposed information collection: Currently approved.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 12, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E5–3848 Filed 7–19–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–37]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Insurance Benefits Claims Package

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

When the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD certain information. This package is being combined with 2502–0415.

DATES: *Comments Due Date:* August 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Insurance Benefits Claims Package.

OMB Approval Number: 2502–0418.

Form Numbers: HUD–2741, HUD–2742, HUD–2744–A, HUD–2744–B, HUD–2744–C, HUD–2744–D, HUD–2744–E, HUD 434, and HUD–1044–D.

Description of the Need for the Information and Its Proposed Use:

When the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD certain information. This package is being combined with 2502–0415.

Reporting Burden:	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
	118	119		4.21		497

Total Estimated Burden Hours: 497.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2005.

Donna L. Eden,

Director, Office of Investment Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. E5–3854 Filed 7–19–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922–N–10]

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the establishment of a new system of records.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of Housing and Urban Development HUD developed the Enterprise Income Verification (EIV) system, which, heretofore, was known as the Upfront Income Verification (UIV) system used by the Office of Public and Indian Housing (PIH). This system of records currently supports the administration of programs for families receiving housing assistance from HUD by Public Housing Agencies (PHAs) that administer HUD's public housing and Section 8 tenant-based rental assistance programs. EIV contains income data of Public Housing and Section 8 program participants. EIV also enables PHAs to verify participant-reported income and identifies households that may have under reported their household's annual income. Eventually, EIV will be made available to administrators (owners and management agents) of the Office of Housing's (Housing) rental assistance programs.

HUD developed the UIV system to reduce subsidy payment errors as a result of tenant under reporting of income to ensure that limited federal resources serve as many eligible families as possible. EIV will facilitate more timely and accurate verification of tenant-reported income at the time of mandatory annual and interim reexamination of household income.

EIV contains personal identifying information from HUD's Public and Indian Housing Information Center (PIC), such as Head of Households and household members name, date of birth and Social Security Number, unit address, PHA program information, and household income details as reported by the participant to the program administrator. These personal identifying data are extracted from PIC and imported into EIV. The system also contains household member(s) income details as reported by state and federal agencies. HUD obtains income details through computer matching programs.

System Security Measures: The integrity and availability of data in EIV is important. Much of the data needs to be protected from unanticipated or unintentional modification. HUD restricts the use of this information to HUD approved officials and PHAs; thus, the data is protected accordingly. Eventually, this restriction will be extended to owners and management agents.

Vulnerabilities and corresponding security measures include: (1) Only persons with PIC User Ids and passwords may access EIV; (2) Access to EIV is controlled using EIV's security module. This module controls a user's access to particular modules based on the user's role and security access level; (3) User IDs are utilized to identify access to sensitive data by users; (4) Data corruption/destruction—PHA users do not have write access to databases. HUD user's write access is limited to user administration by authorized personnel. This will eliminate the risk of data destruction or corruption.

Data Quality: PHAs enter management, building, unit, and family information into PIC. Family information includes the families' names, social security numbers (SSNs), and dates of birth. When a PHA submits family data to PIC, the EIV system will validate each household member's identity. If a household member's identity cannot be verified, EIV will (1) flag the household member record; (2) provide an error message to the PHA, informing the PHA to verify the household member's SSN, name, and/or date of birth; and (3) request the PHA to submit a corrected record (HUD Form 50058) into PIC. EIV will remove the unverified household member record from computer matching request files.

This household member identity verification feature was established to help HUD maintain data quality and integrity and to support one of its strategic objectives to prevent fraud and abuse. This identity verification feature will (1) help confirm that those families entitled to benefits receive benefits, (2) assist in limiting the duplication of benefits, and (3) help prevent the false application for benefits, thereby ensuring data quality. In addition, EIV will receive income data from State Wage Information Collection Agencies (SWICAs), federal agencies, and one or more private vendors. This will allow PHAs and, eventually, owners and management agents to verify the income of newly admitted applicants and tenants at the time of mandatory annual and/or interim reexaminations.

DATES: *Effective Date:* This proposal shall become effective without further notice in 30 calendar days (August 19, 2005) unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: August 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, telephone number (202) 708–2374. Regarding records maintained in Washington, DC, contact: Nicole Faison, Rental Housing Integrity Improvement Project (RHIIP) Manager in the Office of Public and Indian Housing and EIV Program Office Project Manager, telephone number (202) 708–0744. [The above are not toll free numbers.] A telecommunications device for hearing and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as the Enterprise Income Verification (EIV) system.

Title 5 U.S.C 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs and the House Committee on Government Reform pursuant to paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining

Records About Individuals,'' July 25, 1994 (59 FR 37914).

Accordingly, this notice establishes a new system of records and accompanying routine uses to be submitted and accessed initially in the management of rental assistance housing programs by the Office of Public and Indian Housing and eventually in the management of rental assistance housing programs by the Office of Housing.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 12, 2005.

Edward J. Dorris,

Deputy Chief Information Officer for Business Technology and Modernization.

HUD/PIH–5

SYSTEM NAME:

Enterprise Income Verification (EIV).

SYSTEM LOCATIONS:

The files will be maintained at the following location: U. S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Lockheed Martin Corporation, located at 4701 Forbes Blvd., Lanham, MD 20706, will monitor access of any encrypted files containing social security and rent information (subject to the provisions of 26 U.S.C. 6103).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families receiving rental housing assistance via programs administered by the Department of Housing and Urban Development, Tribally Designated Housing Entities participating in the Section 8 program, PHAs and/or owners and management agents, and State agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of unit address (subsidized property address), family composition, and income data obtained from PHAs. The system of records contains—identification information such as names, dates of birth and social security numbers for individuals; addresses; financial data such as tenant-reported income; data obtained from State Wage Information Collection Agencies on wages and unemployment claim information; data obtained from the Social Security Administration (SSA) on Social Security (SS) and Supplemental Security Income (SSI) benefit information; and data obtained from the National Directory of New Hires (NDNH) on new hire, wages and unemployment claim information; and annual income discrepancies as a result of the comparison of tenant reported income to actual income as reported by third party sources (SWICAs, Federal agencies, and/or private vendors).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 and Section 303(i) of the Social Security Act, HUD and HUD-funded PHAs may request wage and claim data from State Wage Information Collection Agencies (SWICAs) responsible for administering state unemployment laws. On October 1, 1994, Section 542(a)(1) of HUD's 1998 Appropriation Act, eliminated a sunset provision to Section 303(i) of the Social Security Act, effectively making permanent the authority requiring state agencies to disclose wage and claim information to HUD and PHAs. On January 23, 2004, Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) was amended to allow HUD to obtain income information from the National Directory of New Hires (NDNH) and disclose this information to PHAs for the purpose of verifying employment and income of rental housing program participants. The Housing and Community Development Act of 1987 authorizes HUD to require applicants for and participants in (as well as members of their households six years of age and older) HUD administered rental housing assistance programs to disclose to HUD their social security numbers as a condition of initial or continuing eligibility for participation in these HUD programs. The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from the Social Security Administration federal tax data as prescribed in section 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code).

PURPOSES:

The primary purpose of EIV is to allow PHAs and, eventually, owners and management agents, to verify tenant reported income, identify unreported income sources and/or amounts received by program participants, and identify substantial annual income discrepancies amongst households that received HUD-provided rental assistance through programs administered by PIH and Housing. The first release of EIV was successfully implemented on August 16, 2004. EIV is a simple, Internet-based integrated system, which enables PHA users, HUD personnel and, eventually, owners and management agents to access a common database of tenant information via their web browser. EIV will aid HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the effective distribution of rental assistance to individuals that meet the requirements of federal rental assistance programs, (b) detecting abuses in assisted housing programs, (c) taking administrative or legal actions to resolve past and current abuses of assisted housing programs, (d) deterring abuses by verifying the income of tenants at the time of annual and interim reexaminations via the use of electronic income data received from State Wage Information Collection Agencies (SWICAs), National Directory of New Hires (NDNH), and the Social Security Administration, (e) evaluating the effectiveness of income discrepancy resolution actions taken by PHAs for some of HUD's rental assistance programs, and (f) reducing administrative burden of obtaining written or oral third party verification (when the tenant does not dispute information provided by EIV). EIV is a management information system that contains tools to help: (1) Improve the income verification process, (2) monitor incidents of potential tenant under reporting of household income (3) produce management reports, and (4) conduct risk assessments.

The Enterprise Income Verification (EIV) system serves as a repository for automated information used when comparing family income data reported by recipients of federal rental assistance to income data received from external sources (*e.g.*, SWICAs, SSA, etc.). Records in PIC and EIV are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the uses cited in the section of this document titled ''Purposes'', other routine uses may include:

1. To Federal, State, and local agencies (*e.g.*, state agencies administering the state's unemployment compensation laws, state welfare and food stamp agencies, U.S Office of Personnel Management, U.S. Postal Service, U.S. Department of Defense, U.S. Department of Health and Human Services, and U.S. Social Security Administration)—to verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs through HUD's tenant income computer matching program;

2. To individuals under contract to HUD or under contract to another agency with funds provided by HUD—for the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing certifications/re-certifications;

3. To PHAs—to verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

4. To private owners and management agents of assisted housing—to verify the accuracy and completeness of applicant and tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

5. To PHAs, owners and management agents, and contract administrators—to identify and resolve discrepancies in tenant data; and

6. To researchers affiliated with academic institutions, with not-for-profit organizations, or with Federal, State or local governments, or to policy researchers—without individual identifiers—name, address, Social Security Number—for the performance of research and statistical activities on housing and community development issues.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS STORAGE:

Records are stored manually in family case files and electronically in office automation equipment. Records are stored on HUD computer servers for field office and PHAs', and eventually, owners' and management agents' access via the Internet to: (1) Obtain social security and supplemental security income data that are not subject to provisions of 26 U.S.C. 6103; (2) obtain wage and unemployment compensation data; and (3) obtain household income discrepancies reports. Software in EIV precludes the transfer of any data subject to 26 U.S.C. 6103 to unencrypted media.

RETRIEVABILITY:

Records may be retrieved by computer search of indices by the Head of Household's name, date of birth, and/or Social Security Number of an existing HUD program participant.

SAFEGUARDS:

Records are maintained at the U.S. Department of Housing and Urban Development in Washington, DC with limited access to those persons whose official duties require the use of such records. Computer files and printed listings are maintained in locked cabinets. Printed listings include masked date of births and social security numbers. Computer terminals are secured in controlled areas, which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access. HUD will safeguard the SSN, income, and personal identifying information obtained pursuant to 26 U.S.C. 6103(l)(7)(A) and (B) in accordance with 26 U.S.C. 6103(p)(4) and the IRS's ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' Publication 1075 (REV 6/2000).

RETENTION AND DISPOSAL:

Computerized family records are maintained in a password-protected environment. If information is needed for evidentiary purposes, documentation will be referred to the HUD Office of Inspector General (OIG) in Washington, DC or other appropriate Federal, State or local agencies charged with the responsibility of investigating or prosecuting violators of Federal law. Documents referred to HUD's OIG will become part of OIG's Investigative Files. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, item 25.

SYSTEM MANAGER AND ADDRESS:

David Sandler, Project Manager of Enterprise Income Verification (EIV) system, U.S. Department of Housing and Urban Development, 550 12th Street SW., First Floor—Desk 1304, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to the Project Manager of the Rental Housing Integrity Improvement Project (RHIIP) in the Office of Public and Indian Housing and/or EIV Program Office Project Manager, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 4204, Washington, DC 20410. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and for applicants wanting to appeal initial agency determinations based on data in EIV, appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

PIH may receive data from HUD field office staff, Federal Government agencies, State and local agencies, private data sources, owners and management agents, and PHAs. PHAs routinely collect personal and income data from participants in and applicants for HUD's public and assisted housing programs. The data collected by PHAs is entered into the PIC system on-line via the system itself, via PHA-owned software, or via HUD's Family Reporting Software (FRS). Data from PIC is imported into EIV and used to create request files for computer matching programs.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E5–3846 Filed 7–19–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 19, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: James Gerlach, Harrison Township, MI, PRT–105808.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kent Hall, Destrehan, LA, PRT–106083.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Matthew Y.H. Yap, Kealakekua, HI, PRT–107416.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Mark Borchard, Somis CA, PRT–103818.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Kevin D. Harms, Brielle, NJ, PRT–104866.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Robert G. Harms, Allenwood, NJ, PRT–104867.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: George R. Harms, Brielle, NJ, PRT–104865.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: John L. Pouleson, Downers Grove, IL, PRT–105483.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: John R. Thodos, Barrington, IL, PRT–106098.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Mark A. Wayne, Arlington, TX, PRT–103609.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Richard R. Jordahl, Fargo, ND, PRT–103811.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: July 1, 2005.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–14203 Filed 7–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by August 19, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: TRL Exotics (dba Double H Exotics), Wellington, FL, PRT–104266.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*) and Arabian oryx (*Oryx leucoryx*) from the captive herd maintained at Double H Exotics and previously permitted under MA 844074, for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of five years.

Applicant: 777 Ranch, Inc., Hondo, TX, PRT–013008.

The applicant requests renewal of their permit authorizing interstate and

foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*), Eld's deer (*Cervus eldi*), Arabian oryx (*Oryx leucoryx*) and red lechwe (*Kobus leche*) from their captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of five years.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Darrel E. Gusa, Kellogg, MN, PRT–102929.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: July 8, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–14204 Filed 7–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the following requests are made:

Applicant: Florida Department of Environmental Protection, Alice Bard, Apopka, Florida, TE105518–0.

The applicant requests authorization to take (capture, mark/recapture, take genetic samples, release) the Anastasia Island beach mouse (*Peromyscus polionotus phasma*). The proposed activities would take place while conducting presence/absence surveys and research investigations necessary to track the status and/or recovery of the species. The proposed activities would occur in the Anastasia State Park and at the Fort Matanzas National Monument, Saint Johns County, Florida.

Applicant: Michael L. Kennedy, Arlington, Tennessee, TE105519–0.

The applicant requests authorization to take (capture, identify, release) the gray bat (*Myotis grisescens*) and the Indiana bat (*Myotis sodalis*) while conducting presence/absence studies. The proposed activities would occur throughout the State of Tennessee and are limited in Alabama to the Little Rivers Canyon National Preserve in DeKalb and Cherokee Counties and Russell Cave National Monument in Jackson County.

Applicant: Robert Environmental Consulting Services, Rex R. Roberg, Cabot, Arkansas, TE105626–0.

The applicant requests authorization to harass (capture, translocate, release) the American burying beetle (*Nicrophorus americanus*) while managing and protecting populations, conducting research studies, characterizing habitat at all known localities, and translocating the species. The proposed activities would occur in McCurtain County, Oklahoma.

Applicant: Michael L. Kennedy, Arlington, Tennessee, TE105519–0.

The applicant requests authorization to take (capture and release) the Indiana bat (*Myotis sodalis*) and the gray bat (*Myotis grisescens*) while conducting presence/absence studies and determining the use of a project area by target species. The proposed activities would occur throughout the species' ranges in Tennessee; Little Rivers Canyon National Preserve, Dekalb and Cherokee Counties, Alabama; and Russell Cave National Monument, Jackson County, Alabama.

Applicant: White Oak Conservation Center, John A. Lukas, Yulee, Florida, TE105674–0.

The applicant requests authorization to take (captive propagate, transport, release) the Mississippi Sandhill Crane (*Grus canadensis pulla*) while conducting breeding and reintroduction activities for the Mississippi Sandhill Crane National Wildlife Refuge. The proposed activities would occur at the Audubon Nature Institute, New Orleans, Louisiana; Mississippi Sandhill Crane National Wildlife Refuge, Gautier, Mississippi; and White Oak Conservation Center, Yulee, Florida.

Applicant: University of Florida, Steve A. Johnson, Plant City, Florida, TE106196–0.

The applicant requests authorization to take (salvage) the following species: flatwoods salamander (*Ambystoma cingulatum*), American alligator (*Alligator mississippiensis*), American crocodile (*Crocodylus acutus*), eastern indigo snake (*Drymarchon corais couperi*), Atlantic salt marsh water snake (*Nerodia clarkia taeniata*), bluetail mole skink (*Eumeces egregius lividus*), sand skink (*Neoseps reynoldsi*), loggerhead sea turtle (*Caretta caretta*), green sea turtle (*Chelonia mydas*), leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's Ridley sea turtle (*Lepiodochelys kempii*), roseate tern (*Sterna dougallii dougallii*), wood stork (*Mycteria americana*), Audubon's crested caracara (*Polyborus plancus audubonii*), bald eagle (*Haliaeetus leucocephalus*), Everglade snail kite (*Rostrhamus sociabilis plumbeus*), Florida scrub jay (*Aphelocoma coerulescens*), Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), Florida grasshopper sparrow (*Ammodramus savannarum floridanus*), red-cockaded woodpecker (*Picoides borealis*), Florida panther (*Puma concolor coryi*), key deer (*Odocoileus virginianum clavium*), Lower Keys marsh rabbit (*Sylvilagus palustris hefneri*), rice rat (*Oryzomys palustris natator*), Key Largo woodrat (*Neotoma floridana smalli*), Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*), Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*), southeastern beach mouse (*Peromyscus polionotus niveiventris*), Anastasia Island beach mouse (*Peromyscus polionotus phasma*), St. Andrew beach mouse (*Peromyscus polionotus peninsularis*), Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*), and Florida saltmarsh vole (*Microtus pennsylvanicus dukecampbelli*) while salvaging whole or parts of specimens for teaching purposes. The teaching collection of the salvaged specimens would be maintained at the University of Florida extension campus, Plant City, Florida.

Applicant: Dr. Joan L. Morrison, Trinity College, Hartford, Connecticut, TE106708–0.

The applicant requests authorization to take (capture, identify, radio tag, collect blood samples, release) the Audubon's crested caracara (*Polyborus plancus audubonii*). The proposed activities would take place while studying the abundance, distribution of nest sites, and habitat use throughout

the Audubon's crested caracara range in Florida.

DATES: We must receive written data or comments on these applications at the address given below, by August 19, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice:

U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone: (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

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. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 1, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–14215 Filed 7–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before August 19, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: (503) 231–2063; fax: (503) 231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–105150

Applicant: Andrew P. Martin, Boulder, Colorado.

The applicant requests a permit to take (capture and collect) the Devils Hole pupfish (*Cyprinodon diabolis*) in conjunction with genetic research in Clark County, Nevada, for the purpose of enhancing its survival.

Permit No. TE–105551

Applicant: Justin J. Meyer, Anaheim, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in southern California for the purpose of enhancing their survival.

Permit No. TE–105148

Applicant: Matthew J. Wacker, Orangevale, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–018180

Applicant: Point Reyes National Seashore, Point Reyes Station, California.

The permittee requests an amendment to remove/reduce to possession (collect seed) *Chorizanthe robusta* var. *robusta* (robust spineflower) in conjunction with restoration activities at the Point Reyes National Seashore in Marin County, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: June 30, 2005.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–14216 Filed 7–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from the public, and from local, State, and Federal agencies on the following permit requests.

DATES: Comments on these permit applications must be received on or before August 19, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: (503) 231–2063; fax: (503) 231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any individual or organization who submits a written request for a copy of such documents to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–103582

Applicant: National Audubon Society, Haleiwa, Hawaii.

The applicant requests a permit to take (harass by survey, locate and monitor nests, and control predators) the Hawaiian moorhen (*Gallinula chloropus sandvicensis*) in conjunction with monitoring activities and habitat enhancement in Honolulu County, Hawaii, for the purpose of enhancing its survival.

Permit No. TE–043638

Applicant: U.S. Army Garrison, Schofield Barracks, Hawaii.

The permittee requests an amendment to remove/reduce to possession (collect, propagate, store seed, and reintroduce) *Chamaescyce herbstii* (Akoko), *Hesperomannia arbuscula* (no common name), *Phyllostegia kaalaensis* (no common name), and *Schiedea kaalae* (no common name) in conjunction with activities to stabilize these species on military land on Oahu Island, Hawaii, for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: June 20, 2005.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–14224 Filed 7–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of availability of Draft Comprehensive Conservation Plan for Lost Trail National Wildlife Refuge, Marion, Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announce that a Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Lost Trail National Wildlife Refuge is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage this refuge for the next 15 years.

DATES: Written comments must be received at the postal or electronic address listed below on or before August 19, 2005.

ADDRESSES: Please provide written comments to Bernardo Garza, Planning Team Leader, Division of Planning, Branch of Comprehensive Conservation Planning, Mountain-Prairie Region, PO Box 25486, Denver Federal Center, Denver, Colorado 80225–0486, or electronically to *bernardo_garza@fws.gov*. A copy of the Draft Plan and Environmental Assessment may be obtained by writing to U.S. Fish and Wildlife Service, Lost Trail National Wildlife Refuge, 6900A Pleasant Valley Road, Marion, Montana 59955; or download from *http://mountain-prairie.fws.gov/planning*.

FOR FURTHER INFORMATION CONTACT: Ray Washtak, Refuge Manager, U.S. Fish and Wildlife Service, Lost Trail National Wildlife Refuge, 6900A Pleasant Valley Road, Marion, Montana 59955; telephone: (406) 858–2216; fax: (406) 858–2218; or e-mail: *ray_washtak@fws.gov*.

SUPPLEMENTARY INFORMATION: Lost Trail National Wildlife Refuge (NWR), comprised of nearly 9,300 acres, is long and narrow, and is nearly bisected throughout its length by the Pleasant Valley Road in Flathead County, in extreme northwestern Montana. This refuge was established in 1999 and is nestled in Montana's Pleasant Valley, within the Fisher River Watershed. Lost Trail NWR can be described as a long valley crossed by Pleasant Valley Creek and encompassing the 182-acre Dahl Lake. Lost Trail NWR is comprised of wetlands, riparian corridors, uplands dominated by prairie and tame grasses, and temperate forests dominated by lodgepole pine and Douglas-fir. Besides numerous migratory waterfowl and neotropical bird species, this refuge is home to federally listed species such as the bald eagle, black tern, boreal toad, and Spalding's catchfly. Canada lynx and trumpeter swan occasionally use refuge habitats, and the grizzly bear, gray wolf, and bull trout occur in Pleasant Valley. Lost Trail NWR was established by Congress with the following purposes: (1) For use by migratory birds, with emphasis on waterfowl and other water birds; (2) for the conservation of fish and wildlife resources; (3) for fish and wildlife-oriented recreation; and (4) for the conservation of endangered and threatened species.

This Draft CCP/EA identifies and evaluates four alternatives for managing Lost Trail NWR for the next 15 years. Alternative D, the No Action Alternative, proposes continuation of current management of the refuge. Alternative A (Proposed Action) emphasizes restoration and maintenance of Dahl Lake, and other native habitats, in vigorous condition to promote biological diversity. High importance is placed on the control of invasive plant species with partners and integrated pest management. It provides habitat in order to contribute to conservation, enhancement and recovery of federally listed species; and possible modification of public uses to protect visitors, and minimize harmful interaction between users and listed species. Alternative B emphasizes manipulation of habitat to promote wildlife populations to provide the public with abundant quality wildlife

recreation, as well as, active research, documentation, and interpretation of cultural resources. This alternative calls for a contact station staffed 7 days a week. Alternative C calls for restoration of habitats to historic conditions, and allowance of natural processes to manage habitats; provides for increased protection of listed species, and de-emphasizing public use opportunities at the refuge (such as no fishing and hunting, except by special permits).

The Proposed Action was selected because it best meets the purposes and goals of Lost Trail NWR, as well as the goals of the National Wildlife Refuge System. The Proposed Action will benefit migrating and nesting waterfowl and neotropical migrants, shore birds, federally listed species, large ungulates, as well as improvements in water quality from riparian habitat restoration. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources will be protected.

Dated: May 27, 2005.

Ron Shupe,

Acting Regional Director, Region 6, Denver, CO.

[FR Doc. 05–14223 Filed 7–19–05; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

In the Matter of Certain Foam Masking Tape; Notice of Commission Decision Not to Review an Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on Remedy, Public Interest, and Bonding

[Inv. No. 337–TA–528]

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 41) issued by the presiding administrative law judge (''ALJ'') finding a violation of section 337 in the above-captioned investigation. Notice is also hereby given that the Commission is requesting briefing on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 205–3095. Copies of all nonconfidential 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 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 the 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 3M Company, 3M Innovative Properties Company, and Mr. Jean Silvestre (collectively, ''3M''), which was subsequently amended. 70 FR 386 (Jan. 4, 2005). The complaint, as amended, alleged a violation of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation and/or sale within the United States after importation, of certain foam masking tape by reason of infringement of certain claims of U.S. Patents Nos. 4,996,092 (''the '092 patent'') and 5,260,097 (''the '097 patent''). The notice of investigation named 13 respondents.

On February 10, 2005, 3M filed a motion to amend the complaint and notice of investigation to add two respondents. On March 1, 2005, the ALJ issued an ID (Order No. 14) granting the motion. No party petitioned for review. On March 29, 2005, the Commission issued a notice of its determination not to review the ID.

Between February and June of 2005, the investigation was terminated as to 14 of the 15 respondents on the basis of settlement agreements and consent orders, or based on consent orders alone. With respect to Jevtec, Ltd.—the sole respondent as to which the investigation was not terminated—3M moved on May 17, 2005, for an order directing Jevtec to show cause why it should not be found in default for failure to respond to the amended complaint and notice of investigation. 3M also requested the issuance of an ID finding Jevtec in default if Jevtec failed to show such cause.

On May 26, 2005, 3M moved for a summary determination of a violation of section 337. On June 6, 2005, the Investigative Attorney (IA), filed a response in support of the motion for summary determination.

On June 7, 2005, the ALJ issued Order No. 36, ordering Jevtec to show cause why it should not be held in default no later than June 14, 2005. Jevtec did not file a response to the order, an answer to the complaint, or a notice of appearance within the time permitted. On June 15, 2005, the ALJ issued an ID (Order No. 39) finding Jevtec in default. No party petitioned for review of the ID. On July 11, 2005, the Commission issued a notice of its determination not to review that ID.

On June 21, 2005, the ALJ issued the subject ID (Order No. 41), granting 3M's motion for a summary determination of a violation of section 337. The ID notes that only the '097 patent is at issue in the summary determination, because the investigation has been terminated with respect to all respondents charged with infringement of the '092 patent. No party petitioned for review of the ID. The Commission has determined not to review this ID.

As to remedy, the ALJ recommended the issuance of a general exclusion order. He also recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that an exclusion order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The

Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the June 21, 2005, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission's investigative attorney are also requested to submit proposed orders for the Commission's consideration. Complainants are further requested to state the expiration date of the patent at issue and the HTSUS numbers under which the infringing goods are imported. Main written submissions and proposed orders must be filed no later than close of business on July 25, 2005. Reply submissions, if any, must be filed no later than the close of business on August 1, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42 and 210.50.

By order of the Commission.

Issued: July 15, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–14289 Filed 7–19–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Clean Air Act

Notice is hereby given that on June 24, 2005, a proposed Consent Judgment in *United States* v. *Advanced Coating Techniques, Inc.*, Civil Action No. CV–01–5414, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will resolve the United States' claims under Section 113 of the Clean Air Act, 42 U.S.C. 7413, on behalf of the U.S. Environmental Protection Agency against defendant Advanced Coating Techniques, Inc. (''Advanced Coating'') in connection with alleged violations of Section 112 of the CAA, 42 U.S.C 7412, and the National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 CFR part 63, subpart N. The Consent Judgment requires Advanced Coating to pay $200,000 in civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *require* v. *Advanced Coating Techniques, Inc.*, D.J. No. 90–5–2–1–07275.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $3.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14273 Filed 7–19–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on July 1, 2005, a proposed Consent Decree in *United States* v. *Gerald Pelletier, Inc.,* Civil No. 1:05–cv–92, was lodged with the United States District Court for the District of Maine.

This action concerns the Hows Corner Superfund Site (''Site''), which is located in Plymouth, Maine. In this action, the United States asserted claims against Gerald Pelletier, Inc., under section 107(a) of CERCLA, 42 U.S.C. 9607(a), for recovery of response costs incurred regarding the Site. The State of Maine also filed a complaint against Gerald Pelletier, Inc., in which it asserted claims under section 107(a) of CERCLA, 42 U.S.C. 9607(a), and under the Maine Uncontrolled Sites Law, 38 M.R.S.A. section 1361 *et seq.,* for recovery of response costs incurred regarding the Site. The proposed consent decree provides for Gerald Pelletier, Inc. to pay $17,638 to the United States and $3,632 to the State of Maine in reimbursement of past response costs at the Site. The decree provides that the United States and the State of Maine covenant not to sue Gerald Pelletier, Inc. under section 107(a) of CERCLA, and the State of Maine covenants not to sue Gerald Pelletier, Inc., under 38 M.R.S.A. section 1367, for past response costs regarding the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v.

Gerald Pelletier, Inc., D.J. No. 90–11–3–1733/5.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Maine, Margaret Chase Smith Federal Bldg., 202 Harlow Street, Room 111, Bangor, ME 04401, and at the U.S. Environmental Protection Agency, Region I Records Center, One Congress Street, Suite 1100, Boston, Massachusetts 02203. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree also may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*) fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14275 Filed 7–19–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Modified Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on July 8, 2005, a Modified Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States and Commonwealth of Massachusetts* v. *City of Gloucester,* Civil Action No. 89–2206–WGY.

The Modified Consent Decree resolves the plaintiffs' claims against the City of Gloucester for violations of the Consent Decree entered by the United States District Court for the District of Massachusetts on or about April 7, 1992, and subsequently amended, and for violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* and the Massachusetts Clean Waters Act, M.G.L. c. 21, section 26 *et seq.,* with respect to discharges from the City of Gloucester's combined sewer overflows (''CSOs''). The Modified Consent Decree would supersede the 1992 Consent Decree.

The Modified Consent Decree requires the City of Gloucester to complete facilities planning, design, and construct several projects to eliminate or reduce discharges of CSOs from the City of Gloucester CSO outfalls 002, 004, 005, 006, and 006A, in accordance with schedules of compliance set forth in the Modified Consent Decree. The Modified Consent Decree also requires the City to undertake certain other projects designed to abate discharges of pollutants to receiving waters, including implementation of a plan to remove infiltration and inflow from the City's sewer system, implementation of a CSO Management Plan, and construction of facilities to achieve compliance with the effluent limitations for chlorine in the City's discharge permit. The Modified Consent Decree also requires the City to pay a civil penalty of $60,000. In addition, in partial mitigation of the claims of the Commonwealth of Massachusetts, Gloucester is required to design and perform a supplemental environmental project consisting of a public outreach and educational campaign.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *City of Gloucester,* D.J. Ref. 90–5–1–1–3388.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02210, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwoood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. For a copy of the proposed Consent Decree including the signature pages and attachments. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $10.50 payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 05–14271 Filed 7–19–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 5, 2005, a proposed Consent Decree in *United States* v. *Licking County,* Civil Action No. C2–05–661, was lodged with the United States District Court for the Southern District of Ohio.

This Consent Decree resolves specified claims against Licking County, Ohio under the Clean Water Act, 33 U.S.C. 1251 *et seq.* Licking County owns and operates a publicly-owned wastewater treatment works (''POTW''), and it discharges effluent from the POTW through an outfall into the South Fork of the Licking River, a navigable water of the United States. Licking County also disposes of sewage sludge from the POTW through land application.

The proposed consent decree requires Licking County to (1) comply with its discharge permit, including interim limitations on bypasses; (2) implement a Compliance Assurance Plan (''CAP''), which includes significant capital and operational changes for its entire POTW (worth an estimated present-value cost of approximately $10 million); and (3) pay civil penalties of $75,000 that will be split equally between the United States and the State of Ohio.

The Department of Justice will receive for period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Ohio* v. *Licking County,* D.J. Ref. 90–5–1–1–4500.

The proposed consent decree may be examined at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604–3590. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent

Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the proposed consent decree, please enclose a check in the amount of $12.50, payable to the U.S. Treasury, for reproduction costs.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14272 Filed 7–19–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 14, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail/Service Establishments or Agriculture.

OMB Number: 1215–0032.

Form Numbers: WH–200 and WH–202.

Frequency: On occasion and annually.

Type of Response: Reporting.

Affected Public: Business or other for-profit; not-for-profit institutions; and farms.

Form	Estimated number of annual responses	Average response time (hours)	Estimated annual burden hours
WH–200 (initial applications)	5	0.50	3
WH–200 (renewal applications)	155	0.17	26
WH–202 (initial applications)	10	0.33	3
WH–202 (renewal applications)	70	0.17	12
Total	240		43

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $96.

Description: The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, sections 14(b)(1) and 14(b)(2) require the Secretary of Labor to provide certificates authorizing the employment of full-time students at 85 percent of the applicable minimum wage in retail or service establishments and in agriculture, to the extent necessary to prevent curtailment of opportunities for employment. These provisions set limits on such employment as well as prescribe safeguards to protect the full-time students so employed and full-time employment opportunities of other workers. Sections 519.3, 519.4 and 519.6 of Regulations, 29 CFR part 519, Employment of Full-Time Students at Subminimum Wages, set forth the application requirements as well as the terms and conditions for the (1) employment of full-time students at subminimum wages under certificates and (2) temporary authorization to employ such students at subminimum wages. The WH–200 and WH–202 are voluntary use forms that are prepared and signed by an authorized representative of the employer to employ full-time students at subminimum wage. This information is used to determine whether a retail or service or agricultural employer should be authorized to pay subminimum wages to full-time students pursuant to the provisions of section 14(b) of the Fair Labor Standards Act.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 05–14197 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,255]

Black & Decker, Power Tools Division, Including On-Site Leased Workers of Employment Control, Inc., Fayetteville, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 25, 2005 in response to a worker petition filed on behalf of all workers of Black & Decker, Power Tools Division, Fayetteville, North Carolina, including leased on-site workers from Employment Control.

The Department, at the request of the State agency, reviewed the petition for workers of the subject firm.

The certification review revealed that workers of Black & Decker are covered by an existing certification, TA–W–56,049, issued on December 16, 2004, which expires on December 16, 2006. Since the workers of Black & Decker, Power Tools Division, Fayetteville, North Carolina, including on-site leased workers of Employment Control, Inc., are covered by an existing certification, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of July 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3841 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,885]

CTNA Akron Test Center, a Subsidiary Of Continental Tire North America (CTNA), Inc., Akron, OH; Notice of Revised Determination on Reconsideration

By application of May 25, 2005, petitioners 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 May 13, 2005 and published in the **Federal Register** on June 13, 2005 (70 FR 34154).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at CTNA Akron Test Center, a subsidiary of Continental Tire North America, Inc., Akron, Ohio engaged in testing services was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that the petitioning group of workers was in direct support of CTNA manufacturing facility in Mayfield, Kentucky. The workers of CTNA, Mayfield, Kentucky were certified eligible for TAA on July 7, 2003. CTNA plant in Mayfield, Kentucky ceased production of tires and shifted it to Mexico in December 2004.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The company official stated that workers of the subject facility performed quality testing on finished tires to ensure compliance to DOT requirements. Thus, the workers were engaged in activities related to the production of tires.

The official further confirmed that workers of the subject firm supported production of tires at an affiliated plant, CTNA plant located in Mayfield, Kentucky prior to its closure in December of 2004.

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 there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of the CTNA Akron Test Center, a subsidiary of Continental Tire North America, Inc., Akron, Ohio who became totally or partially separated from employment on or after April 4, 2005 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 8th day of July, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3838 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,030]

Dorby Frocks, New York, NY; 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 Dorby Frocks, New York, New York. 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–57,030; Dorby Frocks New York, New York (July 8, 2005)

Signed at Washington, DC this 8th day of July 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–3839 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,277]

Hilltop Cedar, St. Maries, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 1, 2005 in response to a workers petition filed by a company official on behalf of workers at Hilltop Cedar, St. Maries, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of July, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3842 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,476]

Menasha Packaging Company, Otsego Mill, Otsego, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 29, 2005 in response to a petition filed by a company official on behalf of workers at Menasha Packaging Company, Otsego Mill, Otsego, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of July, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3844 Filed 7–19–05; 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 June and July 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–57,224; Meridian Automotive Systems, Inc., Canandaigua, NY

TA–W–57,131; Merry Maid Novelties, Bangor, PA

TA–W–57,145; Columbia Lighting, Hubbell Lighting, Inc. Division, Spokane, WA

TA–W–57,197; Penn Ventilation, a subsidiary of Air System Components, LP, Tabor City, NC

TA–W–56,565; Kraft Foods Global, Inc., South Edmeston Manufacturing, New Berlin, NY

TA–W057,206; Motor Components, LLC, Elmira, NY

TA–W–57,111; Dayco Products LLC, Engineering Department, Rochester Hills, MI

TA–W–57,172; Meridian Automotive Systems, Inc., Newton, NC

TA–W–57,214; Omnova Solutions, Inc., Decorative Products Div., Jeannette, PA

TA–W–57,230; Lear Automotive Manufacturing, LLC, Monroe, MI

TA–W–57,345; Merrimac Paper Co., Lawrence, MA

TA–W–56,986; BASF Corp., Agricultural Products Div., Beaumont, TX

TA–W–57,171; Focus: Hope, Manufacturing Div., Detroit, MI

TA–W–57,247 &A Menasha Packaging Co., LLC Neenah, WI and Hartford, WI

TA–W–57,285; Pemstar Chaska Div., Chaska, MN

TA–W–57,465; Premier Refractories, Snow Shoe, PA

TA–W–57,190; National Wood Products, Oxford, ME

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or

production, or both, did not decline) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,306; Bernhardt Furniture Co., Plant 3, Contract Office Furniture Div., Lenoir, 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–57,240; Consolidated Metco, Inc., Rivergate Div., Portland, OR

TA–W–57,302; Fisher-Rosemount Systems, Inc., d/b/a Emerson Process Management, a div. of Emerson Electric, Austin, TX

TA–W–57,260; Renfro Corp., Fort Payne, AL

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–57,305; Robcol, Inc., Shippenville, PA

TA–W–57,256; AC Nielson (US), Inc., TD-Operations, Wilton, CT

TA–W–57,193; DAP Technologies Corp., Plattsburgh Service Center, Plattsburgh, NY

TA–W–57,186; Robinson Manufacturing Co., Oxford, ME

TA–W–57,313; Dorby Frocks, Warehouse/Distribution, Bishopville, SC

TA–W–57,351; Medicare Association of UGS, LLC, a subsidiary of United Government Services, LLC, Ashland, WI

TA–W–57,366; Office Depot, Inc., Torrance, CA

TA–W–57,213; Sandisk Corp., Sunnyvale, CA

TA–W–57,378; Emerson Network Power Energy Systems, formerly know as Marconi Communication, Toccoa, GA

TA–W–57,169; Management Decisions of South Carolina, a div. of Management Decisions, Inc., working at GE Energy, Schenectady, NY

TA–W–57,201; CDI Business Solutions, workers producing ink pens employed at Hewlett Packard, Corvallis, OR

TA–W–57,211; Aerotek, a member of Allegis Group, leased on-site workers at Hewlett-Packard Co., Corvallis, OR

TA–W–57,268; Dun and Bradstreet, Inc., Austin, TX

TA–W–57,314; Wex Tex Industries, Inc., Ashford, AL

TA–W–57,358; Northwest Staffing Resources, working at Radisys Corp., Hillsboro, OR

TA–W–57,136; Manpower, Inc., On-site leased workers at Hewlett-Packard Co., Corvallis, OR

TA–W–57,143; ACCPAC International, Inc., Customer Support, Santa Rosa, CA

TA–W–57,175; Oxystat, Inc., Stat Medical Devices, North Miami, FL

TA–W–57,284; Samsung Information Systems America, Digital Printing Solutions Lab, woodbury, MN

TA–W–57,361; ACS Affiliated Computer Services, Kennett, MO

TA–W–57,382; Gas Transmission Service Co., a div. of The Transcanada Corp., Spokane, WA

TA–W–57,234; Lucent Technologies, Multi-Services Switching, Westford, MA

TA–W–57,265 & A, B; Gas Transmission Service Company, a div. of The Transcanada Corp., Portland, OR, Klamath Falls, OR and Redmond, OR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have not become totally or partially separated, or are threatened to become totally or partially separated.

TA–W–57,173; ECC Card Clothing, Inc., Simpsonville, SC

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–57,275; Integra Tool & Mold, Inc., Erie, PA: May 27, 2004.

TA–W–57,258; Virginia Metal Crafters, Inc., Waynesboro, VA: May 17, 2004.

TA–W–57,183; Panasonic Motor Co., a div. of Panasonic Corp. of North America, Motor Div., including on-site leased workers of CBS Companies Staffing Agency, Berea, KY: May 9, 2004.

TA–W–57,290; Paslode-Cleveland, including leased workers of Kelly Services, Inc., Cleveland, MS: May 23, 2004.

TA–W–57,242; K & C Custom Design, Inc., Greenville, SC: May 19, 2004.

TA–W–57,342; Bemis Company, Inc., Dallas, TX: June 8, 2004.

TA–57,456; Beach Patrol, Inc., Carson, CA: June 13, 2004.

TA–W–57,289; Lane Furniture Industries, Inc., Lane Home Furnishings, Corporate Office, Tupelo, MS: May 18, 2004.

TA–W–57,318; Seneca Foods Corp., Vegetable Div., Dayton, WA: June 3, 2004.

TA–W–57,291; GE Consumer & Industrial, Lighting Div., St. Louis, MO: June 1, 2004.

TA–W–57,272; Calumet Lubricants Co. L.P., Reno Packaging Plant, Reno, PA: May 25, 2004.

TA–W–57,257; IEC Electronics Corp., including on-site leased workers of Aerotek and Kelly Services, Newark, NY: May 16, 2004.

TA–W–57,434; The Pfaltzgraff Co., Downtown York Div., York, PA: June 16, 2004.

TA–W–57,334; Century Furniture Industries, Century Chair Plant #3, Longview, NC: June 7, 2004.

TA–W–57,304; Phil Knit, Inc., Liberty, NC: May 26, 2004.

TA–W–57,299; Bradley Scott Clothes, Inc., Fall River, MA: June 27, 2004.

TA–W–57,286; Bareville Garment Corp., Martindale, PA: May 26, 2004.

TA–W–57,266; Industrial Control Associates, Inc., working on-site at Glad Manufacturing Co., Cartersville, GA: April 30, 2004.

TA–W–57,250; Flowline Division, a subdivision of Markovitz Enterprises, Inc., Whiteville, NC: May 24, 2004.

TA–W–57,243; Celanese Acetate, LLC, a subsidiary of Celanese Corp., Acetate Div., Celco Plant, Narrows, VA: May 17, 2004.

TA–W–57,239; Materials Processing, Inc., Bradner, OH: May 20, 2004.

TA–W–57,225; Newbury's Screen & Stitch, Inc., Park Falls, WI: May 16, 2004.

TA–W–57,218; Frank l. Wells Co., Kenosha, WI: May 19, 2004.

TA–W–57,319; L.R. Nelson Corp., Peoria, IL: June 2, 2004

TA–W–57,156; Acuity Brands, Lithonia Lighting Div., including on-site leased workers of Aerotek, Vermilion, OH: April 20, 2004.

TA–W–57,153 & A; Downeast Woodcrafters, Inc., Skowhegan, ME and Madison, ME: May 10, 2004.

TA–W–57,333; Ready Metal Manufacturing, Chicago, IL: June 7, 2004.

TA–W–57,221 & A, B; Texas Boot, Inc., Manufacturing Plant, Waynesboro, TN, Distribution Center, Lebanon, TN and Corp. Headquarters, Nashville, TN: May 3, 2004.

TA–W–57,199; Ametek, U.S. Gauge Div., Sellersville, PA: May 9, 2005.

TA–W–57,181; Wilmington Products, d/b/a The Northwest Co., Ash, NC: May 11, 2004.

TA–W–57,331; Ready Fixtures, Shell Lake, WI: May 31, 2004.

TA–W–57,252; Bemis Company, Inc., Polyethylene Packaging Group, West Hazleton, PA: May 23, 2004.

TA–W–57,187; Benteler Mechanical Engineering, Inc., Fort Wayne, IN: May 16, 2004.

TA–W–57,202; Frederick Cooper Lamps Co., Chicago, IL: May 17, 2004.

TA–W–57,393; Panther Machine, Inc., including on-site leased workers of Arcadia Staff Resources, Wixom, MI: June 13, 2004.

TA–W–57,261; Burlington Futon Co., Inc., Burlington, VT: May 20, 2004.

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of Section 222 have been met.

TA–W–57,425; Visionaire Lighting, Gardena, CA: June 20, 2004.

TA–W–57,387; Gilbert Martin Woodworking Company, Inc., d/b/a Martin Furniture, San Diego, CA: June 9, 2004.

TA–W–57,460; Alandale Knitting Co., Troy, NC: June 22, 2004.

TA–W–57,424; Toter, Inc., including leased workers of Accurate, Venturi, Staffmasters USA, Statesville, NC: June 14, 2004.

TA–W–57,416; IR Security and Safety, a subsidiary of Ingersoll-Rand, including on-site leased workers of Adecco, Colorado Springs, CO: June 17, 2004.

TA–W–57,404; Velcro USA, Inc., Lancaster, SC: June 16, 2004.

TA–W–57,330; Davy Manufacturing, Inc., Collingdale, PA: June 1, 2004.

TA–W–57,398; Target Stamped Products Corp., Kinsman, OH: June 6, 2004.

TA–W–57,395; Nellson Nutraceutical, Eastern Bar Div., Cato, NY: May 26, 2004.

TA–W–57,329; Kimberly-Clark/Avent, Inc., Avent-Fort Worth Division, a subsidiary of Kimberly-Clark Corp., including leased on-site workers of Cornerstone Staffing, Fort Worth, TX: April 1, 2004.

TA–W–57,303; TI Automotive, LLC, Normal, IL: June 2, 2004.

TA–W–57,328; Rehau, Inc., Plant Sturgis Div., Sturgis, MI: June 1, 2004.

TA–W–57,283; Safegard Acquisition Corp., Lancaster, KY: May 23, 2004.

TA–W–57,222; Culp, Inc., Culp Finishing, Burlington, NC: May 12, 2004.

TA–W–57,180; Kimball Electronics Group, a div. of Kimball International, Auburn, IN: May 13, 2004.

TA–W–57,276 & A; Johnson Controls, Inc., System Products Div., Actuator Production, Watertown, WI and Software Duplication Production, Watertown, WI: May 27, 2004.

TA–W–57,227; Black Box Network Services, leased on-site workers at Hewlett-Packard Company, Corvallis, OR: May 18, 2004.

TA–W–57,151; U.S. Zinc, Zinc Oxide Division, Hillsboro Plant, Taylor Springs, IL: May 10, 2004.

TA–W–57,311; EMA, Inc., Polishing Department, New York, NY: May 16, 2004.

TA–W–57,354; Visteon Systems, LLC, Climate Control Div., Connersville, IN: May 25, 2004.

TA–W–57,323; American Safety Razor Co., Wet Shaving Div., a subsidiary of J.W. Childs & Associates, including on-site leased workers of Express Personnel Services, Knoxville, TN: June 1, 2004.

TA–W–57,316; Flow Robotic Systems, Inc., Automation Applications Group, including on-site leased workers of Aerotek, and Dydrologic, Wixom, MI: June 6, 2004.

TA–W–57,264; Kasco Corp., a subsidiary of Bairnco Corp., St. Louis, MO: June 27, 2005.

TA–W–57,208; Wiremold/Legrand, Brooks Electronics Div., including on-site leased workers of Corestaff, Morstaffing and Supreme Staffing, Philadelphia, PA: May 18, 2004.

TA–W–57,359 & A, B, C & D; Mid-West Metal Products Co., Inc., Corporate Office, Muncie, IN, Liberty Street Plant, Muncie, IN, Mt. Pleasant Plant, Muncie, IN, Selma Plant, Muncie, IN and Warehouse Two Plant, Muncie, IN: May 11, 2004.

TA–W–57,217; Wade Manufacturing Co., Wadesboro Div., Wadesboro, NC: May 18, 2004.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

TA–W–57,203; Assembly Services and Packaging, Inc., Hudson, WI

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–57,342; Bemis Company, Inc., Dallas, TX

TA–W–57,456; Beach Patrol, Inc., Carson, CA

TA–W–57,258; Virginia Metal Crafters, Inc., Waynesboro, VA

TA–W–52,117; Johnstown America Corp., Johnstown, PA

TA–W–57,290; Paslode-Cleveland, including leased workers of Kelly Services, Inc., Cleveland, MS

TA–W–57,183; Panasonic Motor Co., a div. of Panasonic Corp., of North America, Motor Division, including on-site leased workers of CBS Companies Staffing Agency, Berea, KY

TA–W–57,387; Gilbert Martin Woodworking Co., Inc., d/b/a Martin Furniture, San Diego, CA.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–57,242; K & C Custom Design, Inc., Greenville, SC

TA–W–57,275; Integra Tool and Mold, Inc., Erie, PA

TA–W–57,425; Visionaire Lighting, Gardena, CA

TA–W–52,448; T.S. Trim Industries, Inc., Athens Div., Athens, OH

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–57,173; ECC Card Clothing, Inc., Simpsonville, SC

TA–W–57,265 & A, B; Gas Transmission Service Co., a div. of The Transcanada Corp., Portland, OR, Klamath Falls, OR and Redmond, OR

TA–W–57,234; Lucent Technologies, Multi-Services Switching, Westford, MA

TA–W–57,382; Gas Transmission Service Co., a div. of The Transcanada Corp., Spokane, WA

TA–W–57,361; ACS Affiliated Computer Services, Kennett, MO

TA–W–57,284; Samsung Information Systems America, Digital Printing Solutions Lab, Woodbury, MN

TA–W–57,175; Oxystat, Inc., Stat Medical Devices, North Miami, FL

TA–W–57,143; ACCPAC International, Inc., Customer Support, Santa Rosa, CA

TA–W–57,136; Manpower, Inc., On-Site Leased Workers at Hewlett-Packard Co., Corvallis, OR

TA–W–57,358; Northwest Staffing Resources, Working at Radisys Corp., Hillsboro, OR

TA–W–57,314; Wex Tex Industries, Inc., Ashford, AL

TA–W–57,268; Dun and Bradstreet, Inc., Austin, TX

TA–W–57,213; Sandisk Corp., Sunnyvale, CA

TA–W–57,211; Aerotek, a member of Allegis Group, leased on-site workers at Hewlett-Packard Co., Corvallis, OR
TA–W–57,201; CDI Business Solutions, workers producing ink pens employed at Hewlett Packard, Corvallis, OR
TA–W–57,169; Management Decisions of South Carolina, a div. of Management Decisions, Inc., workers at GE Energy, Schenectady, NY
TA–W–57,378; Emerson Network Power, Energy Systems, formerly known as Marconi Communication, Toccoa, GA
TA–W–57,366; Office Depot, Inc., Torrance, CA
TA–W–57,351; Medicare Association of UGS, LLC, a subsidiary of United Government Services, LLC, Ashland, WI
TA–W–57,313; Dorby Frocks, Warehouse/Distribution, Bishopville, SC
TA–W–57,186; Robinson Manufacturing Co., Oxford, ME
TA–W–57,260; Renfro Corp., Fort Payne, AL
TA–W–57,302; Fisher-Rosemount Systems, Inc., d/b/a Emerson Process Management, a div. of Emerson Electric, Austin, TX
TA–W–57,240; Consolidated Metco, Inc., Rivergate Div., Portland, OR
TA–W–57,224; Meridian Automotive Systems, Inc., Canandaigua, NY
TA–W–57,131; Merry Maid Novelties, Bangor, PA
TA–W–57,145; Columbia Lighting, Hubbell Lighting, Inc., Div., Spokane, WA
TA–W–57,197; Penn Ventilation, a subsidiary of Air System Components, LP, Tabor City, NC
TA–W–56,565; Kraft Foods Global, Inc., South Edmeston Manufacturing, New Berlin, NY
TA–W–57,206; Motor Components, LLC, Elmira, NY
TA–W–57,111; Dayco Products, LLC, Engineering Department, Rochester Hills, MI
TA–W–57,172; Meridian Automotive Systems, Inc., Newton, NC
TA–W–57,214; Omnova Solutions, Inc., Decorative Products Div., Jeannette, PA
TA–W–57,230; Lear Automotive Manufacturing, LLC, Monroe, MI
TA–W–57,345; Merrimac Paper Co., Lawrence, MA
TA–W–56,986; BASF Corp., Agricultural Products Div., Beaumont, TX
TA–W–57,171; Focus: Hope, Manufacturing Div., Detroit, MI
TA–W–57,247 & A; Menasha Packaging Co., LLC Neenah, WI and Hartford, WI
TA–W–57,285; Pemstar, Chaska Div., Chaska, MN
TA–W–57,465; Premier Refractories, Snow Shoe, PA

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–57,318; Seneca Foods Corp., Vegetable Div., Dayton, WA: June 3, 2004.
TA–W–57,203; Assembly Services and Packaging, Inc., Hudson, WI: May 17, 2004.
TA–W–57,289; Lane Furniture Industries, Inc., Lane Home Furnishings, Corporate Office, Tupelo, MS: May 18, 2004.
TA–W–57,291; GE Consumer & Industrial, Lighting Div., St. Louis, MO: June 1, 2004.
TA–W–57,272; Calumet Lubricants Co. L.P., Reno Packaging Plant, Reno, PA: May 25, 2004.
TA–W–57,257; IEC Electronics Corp., including on-site leased workers of Aerotek and Kelly Services, Newark, NY: May 16, 2004.
TA–W–57,434; The Pfaltzgraff Co., Downtown York Div., York, PA: June 16, 2004.
TA–W–57,334; Century Furniture Industries, Century Chair Plant #3, Longview, NC: June 7, 2004.
TA–W–57,304; Phil Knit, Inc., Liberty, NC: May 26, 2004.
TA–W–57,299; Bradley Scott Clothes, Inc., Fall River, MA: June 27, 2004.
TA–W–57,286; Bareville Garment Corp., Martindale, PA: May 26, 2004.
TA–W–57,266; Industrial Control Associates, Inc., working on-site at Glad Manufacturing Co., Cartersville, GA: April 30, 2004.
TA–W–57,250; Flowline Division, a subdivision of Markovitz Enterprises, Inc., Whiteville, NC: May 24, 2004.
TA–W–57,243; Celanese Acetate, LLC, a subsidiary of Celanese Corp., Acetate Div., Celco Plant, Narrows, VA: May 17, 2004.
TA–W–57,239; Materials Processing, Inc., Bradner, OH: May 20, 2004.
TA–W–57,225; Newbury's Screen & Stitch, Inc., Park Falls, WI: May 16, 2004.
TA–W–57,218; Frank l. Wells Co., Kenosha, WI: May 19, 2004.
TA–W–57,319; L.R. Nelson Corp., Peoria, IL: June 2, 2004.
TA–W–57,156; Acuity Brands, Lithonia Lighting Div., including on-site leased workers of Aerotek, Vermilion, OH: April 20, 2004.
TA–W–57,153 & A; Downeast Woodcrafters, Inc., Skowhegan, ME and Madison, ME: May 10, 2004.
TA–W–57,333; Ready Metal Manufacturing, Chicago, IL: June 7, 2004.
TA–W–57,221 & A, B; Texas Boot, Inc., Manufacturing Plant, Waynesboro, TN, Distribution Center, Lebanon, TN and Corp. Headquarters, Nashville, TN: May 3, 2004.
TA–W–57,199; Ametek, U.S. Gauge Div., Sellersville, PA: May 9, 2005.
TA–W–57,181; Wilmington Products, d/b/a The Northwest Co., Ash, NC: May 11, 2004.
TA–W–57,331; Ready Fixtures, Shell Lake, WI: May 31, 2004.
TA–W–57,460; Alandale Knitting Co., Troy, NC: June 22, 2004.
TA–W–57,424; Toter, Inc., including leased workers of Accurate, Venturi, Staffmasters USA, Statesville, NC: June 14, 2004.
TA–W–57,416; IR Security and Safety, a subsidiary of Ingersoll-Rand, including on-site leased workers of Adecco, Colorado Springs, CO: June 17, 2004.
TA–W–57,404; Velcro USA, Inc., Lancaster, SC: June 16, 2004.
TA–W–57,330; Davy Manufacturing, Inc., Collingdale, PA: June 1, 2004.
TA–W–57,398; Target Stamped Products Corp., Kinsman, OH: June 6, 2004.
TA–W–57,395; Nellson Nutraceutical, Eastern Bar Div., Cato, NY: May 26, 2004.
TA–W–57,329; Kimberly-Clark/Avent, Inc., Avent-Fort Worth Division, a subsidiary of Kimberly-Clark Corp., including leased on-site workers of Cornerstone Staffing, Fort Worth, TX: April 1, 2004.
TA–W–57,303; TI Automotive, LLC, Normal, IL: June 2, 2004.
TA–W–57,328; Rehau, Inc., Plant Sturgis Div., Sturgis, MI: June 1, 2004.

TA–W–57,283; Safegard Acquisition Corp., Lancaster, KY: May 23, 2004.
TA–W–57,222; Culp, Inc., Culp Finishing, Burlington, NC: May 12, 2004.
TA–W–57,180; Kimball Electronics Group, a div. of Kimball International, Auburn, IN: May 13, 2004.
TA–W–57,276 & A; Johnson Controls, Inc., System Products Div., Actuator Production, Watertown, WI and Software Duplication Production, Watertown, WI: May 27, 2004.
TA–W–57,227; Black Box Network Services, leased on-site workers at Hewlett-Packard Company, Corvallis, OR: May 18, 2004.
TA–W–57,151; U.S. Zinc, Zinc Oxide Division, Hillsboro Plant, Taylor Springs, IL: May 10, 2004.
TA–W–57,311; EMA, Inc., Polishing Department, New York, NY: May 16, 2004.
TA–W–57,354; Visteon Systems, LLC, Climate Control Div., Connersville, IN: May 25, 2004.
TA–W–57,323; American Safety Razor Co., Wet Shaving Div., a subsidiary of J.W. Childs & Associates, including on-site leased workers of Express Personnel Services, Knoxville, TN: June 1, 2004.
TA–W–57,316; Flow Robotic Systems, Inc., Automation Applications Group, including on-site leased workers of Aerotek, and Dydrologic, Wixom, MI: June 6, 2004.
TA–W–57,264; Kasco Corp., a subsidiary of Bairnco Corp., St. Louis, MO: June 27, 2005.
TA–W–57,217; Wade Manufacturing Co., Wadesboro Div., Wadesboro, NC: May 18, 2004.
TA–W–57,208; Wiremold/Legrand, Brooks Electronics Div., including on-site leased workers of Corestaff, Morstaffing and Supreme Staffing, Philadelphia, PA: May 18, 2004.
TA–W–57,359 & A, B, C & D; Mid-West Metal Products Co., Inc., Corporate Office, Muncie, IN, Liberty Street Plant, Muncie, IN, Mt. Pleasant Plant, Muncie, IN, Selma Plant, Muncie, IN and Warehouse Two Plant, Muncie, IN: May 11, 2004.
TA–W–54,714; Carbo Minerals, LP, Wrightstown, WI: March 31, 2003 through April 23, 2006.
TA–W–52,429; Agilent Technologies, ASICS Product Div., (SPD), Fort Collins, CO: July 21, 2002 through September 5, 2005.
TA–W–52,417; Pennsylvania House, Inc., Lewisburg, PA: July 17, 2002 through September 2, 2005
TA–W–54,918; Invensys Appliance Controls, North Manchester, IN: May 14, 2003 through May 28, 2006.
TA–W–54,677; Penn Champ, Inc., East Butler, PA: March 31, 2003 through April 23, 2006.
TA–W–52,415; Todays Plastics, Booneville, AR: July 9, 2002 through September 9, 2005.
TA–W–52,291; Sterling China Co., Wellsville, OH: June 19, 2002 through September 15, 2005.

I hereby certify that the aforementioned determinations were issued during the months of June and July 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: July 12, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–3840 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 1, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 1, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of July, 2005.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 06/13/2005 and 06/24/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,367	Tellabs (Wkrs)	Petuluma, CA	06/13/2005	06/13/2005
57,368	Holyoke Card Co., Inc. (Comp)	Springfield, MA	06/13/2005	06/06/2005
57,369	U.S. Aluminum Products, Inc. (State)	Haskell, NJ	06/13/2005	06/10/2005
57,370	SportRack Automotive (Comp)	Port Huron, MI	06/13/2005	06/10/2005
57,371	Hampton Paper and Transfer Printing, Inc. (Comp)	Johnson City, TN	06/13/2005	06/09/2005
57,372	HO Sports Company, Inc. (Comp)	Rodmond, WA	06/13/2005	06/08/2005
57,373	Teradyne, Inc. (State)	Central Boston, MA	06/13/2005	06/06/2005
57,374	United Plastic Group, Inc. (Wkrs)	El Paso, TX	06/14/2005	06/14/2005
57,375	Midwest Manufacturing (Comp)	Kellogg, IA	06/14/2005	06/08/2005

APPENDIX—Continued

[Petitions instituted between 06/13/2005 and 06/24/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,376	Arnold Magnetics (Wkrs)	Norfolk, NE	06/14/2005	06/08/2005
57,377	TMobile (State)	LaGrange, GA	06/14/2005	06/10/2005
57,378	Emerson Network Power (NPC)	Toccoa, GA	06/15/2005	06/13/2005
57,379	Cerro Metal Products Co. (Wkrs)	Bellefonte, PA	06/15/2005	06/13/2005
57,380	Patterson Wood Products (State)	Nacogdoches, TX	06/15/2005	06/13/2005
57,381	Brooskis Uniform and Equipment (Wkrs)	Tacoma, WA	06/15/2005	06/13/2005
57,382	Gas Transmission Service Co. (NPW)	Spokane, WA	06/15/2005	06/13/2005
57,383	Lexalite International Corp. (Wkrs)	Charlevoix, MI	06/15/2005	06/15/2005
57,384	Laidlaw (State)	Kingman, AZ	06/15/2005	06/07/2005
57,385	Acoustic Authority (State)	Valencia, CA	06/15/2005	06/02/2005
57,386	First Inertia Switch (Comp)	Grand Blanc, MI	06/16/2005	06/15/2005
57,387	Gilbert Martin Woodworking Co., Inc (Wkrs)	San Diego, CA	06/16/2005	06/09/2005
57,388	Nokia (State)	Fort Worth, TX	06/16/2005	06/14/2005
57,389	Payton Technology Company (State)	Fountain Valley, CA	06/16/2005	06/15/2005
57,390	Commemorative Brands, Inc. (Comp)	El Paso, TX	06/16/2005	06/13/2005
57,391	Nortel (Wkrs)	RTP, NC	06/16/2005	06/10/2005
57,392	Apex Texicon, Inc. (Comp)	Bangor, PA	06/16/2005	06/15/2005
57,393	Panther Machine, Inc. (Comp)	Wixom, MI	06/16/2005	06/13/2005
57,394	EDSCHA Roof Systems, LLC (Wkrs)	Greer, SC	06/16/2005	06/09/2005
57,395	Nellson Nutraceutical (Wkrs)	Cato, NY	06/16/2005	05/26/2005
57,396	Levy Group (The) (UNITE)	New York, NY	06/16/2005	06/10/2005
57,397	Wyeth Pharmaceuticals, Inc. (Wkrs)	Rouses Point, NY	06/16/2005	06/03/2005
57,398	Target Stamped Products Corporation (Comp)	Kinsman, OH	06/16/2005	06/06/2005
57,399	Electrolux Home Products (Comp)	Greenville, MI	06/17/2005	06/17/2005
57,400	Cooper Wiring Devices (UAW)	Long Island City, NY	06/17/2005	06/16/2005
57,401	CDS Ensembles (Wkrs)	Greer, SC	06/17/2005	06/13/2005
57,402	St. John, Inc. (State)	Irvine, CA	06/17/2005	06/16/2005
57,403	Alfa Laval, Inc. (Wkrs)	Pleasant Prairie, WI	06/17/2005	06/16/2005
57,404	Velcro USA, Inc. (Comp)	Lancaster, SC	06/17/2005	06/16/2005
57,405	Foamex (Wkrs)	Newton, NC	06/17/2005	06/16/2005
57,406	Dana-Torque Traction Mfg., Inc. (Comp)	Cape Girardeau, MO	06/17/2005	06/13/2005
57,407	Cattiva, Inc. (UNITE)	New York, NY	06/17/2005	05/27/2005
57,408	Advanced Electronics, Inc. (Wkrs)	Boston, MA	06/17/2005	06/03/2005
57,409	Elbeco, Inc. (UNITE)	Meyersdale, PA	06/20/2005	06/07/2005
57,410	Ametek USG Division (Comp)	Bartow, FL	06/20/2005	06/17/2005
57,411	Lexington Home Brands (Wkrs)	Hildebran, NC	06/20/2005	06/13/2005
57,412	Reptron (State)	Hibbing, MN	06/20/2005	06/20/2005
57,413	Mount Vernon Mills, Inc. (Comp)	Tallassee, AL	06/20/2005	06/20/2005
57,414	Thermtrol Corporation (Wkrs)	North Canton, OH	06/20/2005	06/10/2005
57,415	Quantum/Certance (State)	Costa Mesa, CA	06/20/2005	06/03/2005
57,416	IR Security and Safety (Comp)	Colorado Springs, CO	06/21/2005	06/17/2005
57,417	Unaxis (State)	Golden, CO	06/21/2005	06/20/2005
57,418	Scotts Company (The) (Wkrs)	Marysville, OH	06/21/2005	04/26/2005
57,419	Sabre Holdings, Inc. (Wkrs)	Tulsa, OK	06/21/2005	06/17/2005
57,420	Honeywell Int'l, Inc. (State)	Glendale, AZ	06/21/2005	06/14/2005
57,421	Blair Corporation (NPW)	Erie, PA	06/21/2005	06/20/2005
57,422	Benedict Manufacturing Co. (Comp)	Big Rapids, MI	06/21/2005	06/17/2005
57,423	Bruckner Supply Company (NPC)	Grand Junction, CO	06/21/2005	06/13/2005
57,424	Toter, Inc. (Comp)	Statesville, NC	06/21/2005	06/14/2005
57,425	Visionaire Lighting (State)	Gardena, CA	06/21/2005	06/20/2005
57,426	Mercury Marine (Comp)	St. Cloud, FL	06/21/2005	06/20/2005
57,427	Pomeroy Computer Resources (Wkrs)	Macon, GA	06/21/2005	06/20/2005
57,428	Americal Corporation (Comp)	Henderson, NC	06/22/2005	06/17/2005
57,429	Tyco Electronics (Comp)	Menlo Park, CA	06/22/2005	06/21/2005
57,430	Springs Industries, Inc. (Comp)	Rock Hill, SC	06/22/2005	06/21/0005
57,431	Fechheimer (UNITE)	Jefferson, PA	06/22/2005	06/20/2005
57,432	Alcoa Automotive Castings (USW)	Hawesville, KY	06/22/2005	06/21/2005
57,433	DSM Pharmaceuticals, Inc. (Wkrs)	Greenville, NC	06/22/2005	06/17/2005
57,434	Pfaltzgraff Company (The) (NPC)	York, PA	06/22/2005	06/16/2005
57,435	Burns Wood Products, Inc. (Comp)	Granite Falls, NC	06/22/2005	06/21/2005
57,436	Leviton Mfg. Co., Inc. (Comp)	Warwick, RI	06/22/2005	06/20/2005
57,437	Eaton—Hydraulics (Comp)	Vinita, OK	06/23/2005	06/22/2005
57,438	Hudson RCI (Comp)	Temecula, CA	06/23/2005	06/20/2005
57,439A	Unit Parts Company (Comp)	Edmond, OK	06/23/2005	06/22/2005
57,439	Unit Parts Company (Comp)	Oklahoma, OK	06/23/2005	06/22/2005
57,440	Trends Corporation (State)	Miami, FL	06/23/2005	06/02/2005
57,441	Wescast (Wkrs)	Cordele, GA	06/23/2005	06/22/2005
57,442	Menlo Worldwide (NPC)	Salem, NH	06/23/2005	06/20/2005
57,443	Multitone Engraving Co., Inc. (State)	Rochelle Park, NJ	06/23/2005	06/23/2005
57,444	Whaling Mfg. Co., Inc. (Comp)	New York, NY	06/24/2005	06/21/2005

APPENDIX—Continued

[Petitions instituted between 06/13/2005 and 06/24/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,445	Liz Claiborne/Ellen Tracy (UNITE)	North Bergen, NJ	06/24/2005	06/21/2005
57,446	Hercules (State)	Parlin, NJ	06/24/2005	06/24/2005
57,447	LC Special Markets Co., Inc. (State)	North Bergen, NJ	06/24/2005	06/24/2005
57,448	Mammoth, Inc. (State)	Chaska, MN	06/24/2005	06/24/2005
57,449	UNICIRCUIT (State)	Roseville, MN	06/24/2005	06/24/2005
57,450	Zebra Pen Corp. (State)	Edison, NJ	06/24/2005	06/09/2005

[FR Doc. E5–3843 Filed 7–19–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 6, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *requestschedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (note the new address for requesting schedules using e-mail):

1. Department of Education, Office of the Chief Financial Officer (N1–441–05–4, 3 items, 3 temporary items). Records relating to the activities of the agency's institutional review board pertaining to the protection of human subjects involved in research projects conducted or funded by the agency. Included are such records as minutes of meetings, copies of research proposals, decision/approval documents, and progress reports submitted by investigators. Electronic copies of records created using electronic mail and word processing are also included.

2. Department of Justice, Criminal Division (N1–60–04–6, 4 items, 3 temporary items). S-Visa case files, including electronic copies of records created using electronic mail and word processing. Proposed for permanent

retention are recordkeeping copies of historically significant case files.

3. Department of Justice, Civil Division (N1–60–04–7, 12 items, 7 temporary items). Inputs and outputs of the Victim Compensation Management System, claimant case files, and general correspondence of the September 11th Victim Compensation Fund of 2001. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of background and policy files relating to the administration of the Fund, and the master files and system documentation of the Victim Compensation Management System, which includes a complete copy of the claimant case file and a tracking database.

4. Department of Justice, Office on Violence Against Women (N1–60–05–5, 3 items, 3 temporary items). Grant case files and electronic copies of records created using electronic mail and word processing.

5. Department of Justice, Federal Bureau of Investigation (N1–65–04–5, 19 items, 17 temporary items). Inputs, outputs, system documentation, master files, and related records associated with the Integrated Automated Fingerprint Identification System. Proposed for permanent retention are the Interstate Identification Index and the related system documentation.

6. Department of Justice, Federal Bureau of Investigation (N1–65–05–4, 7 items, 6 temporary items). Distribution copies, distribution lists, standard operating procedures, and originating office input for the Director's briefing books accumulated by the Current Intelligence Unit. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are the master copies of the Director's briefing books.

7. Department of Justice, Federal Bureau of Investigation (N1–65–05–5, 13 items, 9 temporary items). Inputs, outputs, and master files of the Freedom of Information Act/Privacy Act Processing System. Proposed for permanent retention are the electronic versions of redacted case files where the original case file is scheduled as permanent, system documentation, and records relating to cases litigated before the Supreme Court.

8. Department of Justice, Bureau of Prisons (N1–129–05–6, 5 items, 5 temporary items). Inputs, outputs, master files and system documentation associated with an electronic system which summarizes financial data, inventory backlogs, and sales data in graphic and textual form. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of Justice, Bureau of Prisons (N1–129–05–7, 6 items, 6 temporary items). Inputs, outputs, master files, and system documentation associated with the Bureau's Trust Fund Accounting and Commissary System, which is used to maintain and track inmate financial transactions as well as warehouse and commissary inventories and commissary sales. Also included are electronic copies of records created using electronic mail or word processing.

10. Department of Justice, Bureau of Prisons (N1–129–05–8, 3 items, 3 temporary items). Architectural renovation and modification records and correspondence files accumulated by the Administration Division's Facilities Branch. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of construction drawings and modifications accumulated by the Design and Construction Branch are proposed for permanent retention in a pending schedule.

11. Department of State, Bureau of Educational and Cultural Affairs (N1–59–05–1, 4 items, 3 temporary items). Schedules of daily activities maintained by the Assistant Secretary for Educational and Cultural Affairs and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of subject files of the Assistant Secretary.

12. Environmental Protection Agency, Office of Air and Radiation (N1–412–05–8, 6 items, 3 temporary items). Electronic software programs, inputs, and electronic data pertaining to allowance tracking. Records are associated with the Clean Air Markets Division Business System, which is used in connection with the market-based emissions trading program. Proposed for permanent retention are the electronic data and supporting documentation for sub-systems that include source management data and emissions tracking data.

Dated: July 13, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–14209 Filed 7–19–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, July 26, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is Open to the Public.

MATTERS TO BE CONSIDERED: 7642A Railroad Accident Report—Derailment of Amtrak Train No. 58, City of New Orleans, near Flora, Mississippi, April 6, 2004 (DCA–04–MR–008).

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, July 22, 2004.

The public may view the meeting via a live or achived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 15, 2004.

Vicky D'Onofiro,

Federal Register Liaison Officer.

[FR Doc. 05–14298 Filed 7–18–05; 12:08 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 162nd meeting on August 2–4, 2005, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, August 2, 2005

The Committee will conduct a 2-day working group meeting on Waste Determinations.

8:30 a.m.–11:25 a.m. Session 1: (Open)—This session will provide a background for waste determinations. The ACNW Moderator will discuss the purpose of the Working Group meeting and provide an overview of the meeting sessions. Department of Energy (DOE) staff will provide an overview of DOE's current and planned management of tank waste at four tank sites, including waste handling practices, waste streams likely to require waste determinations and their characteristics. NRC staff will provide an overview of NRC's

involvement in waste determination evaluations to date, a summary of new waste determination provisions in the National Defense Authorization Act (NDAA) of 2005, and anticipated waste determination activities by the NRC.

11:25 a.m.–4:15 p.m. Session 2: (Open)—Invited experts will address state-of-the-art and R&D technology for waste retrieval including removal of common target radionuclides, and technology for characterizing tank heels. In addition, a historical perspective on the definition of ''highly radioactive waste'' in the regulations and in practice will be provided. There will also be a roundtable discussion of Session 2 topics.

4:15 p.m.–5 p.m. Session 3: (Open)—Invited experts will discuss the status of technology for using cementitious materials to stabilize wastes.

Wednesday, August 3, 2005

8:30 a.m.–11:35 a.m. Session 3, continued: (Open)—Invited experts will address the status and prospects of predicting durability of grouts; performance assessment perspectives on waste disposal; and practical approaches to make decisions on waste determinations. There will also be a roundtable discussion of Session 3 topics.

11:35 a.m.–4:40 p.m. Session 4: (Open)—Invited experts will address status of technology for environmental monitoring of on-site waste disposal, monitoring of engineered barriers performance, and non-destructive monitoring for cementitious waste forms. There will also be a roundtable discussion of Session 4 topics, as well as topics from other sessions as they relate to the waste determination provisions in the NDAA.

4:40 p.m.–5 p.m.: (Open)—The ACNW Committee members will discuss the main thoughts and findings of the Working Group meeting, and a potential letter/report to the Commission.

Thursday, August 4, 2005

10:15 a.m.–10:20 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

10:20 a.m.–11:30 a.m.: Discussion of Current Letters/Reports (Open)—The Committee will discuss prepared draft letters and reports on April 2005 Center for Nuclear Waste Regulatory Analyses Program Review, NRC Office of Nuclear Regulatory Research Generic Waste-Related Research, and Risk-Informing Nonreactor Activities.

12:45 p.m.–3:45 p.m.: Status of Repository Design Issues (Open)—The Committee will hear a briefing by the NRC staff on issues related to the design of a geologic repository at Yucca Mountain, Nevada. The general areas to be addressed are: ''NRC Staff Views on the Sufficiency of Current U.S. Department of Energy (DOE) Level of Design Detail;'' ''Recent NRC Staff Visits to Spent Nuclear Fuel Handling Facilities in France (Cogema), and the United States (Idaho and Washington);'' and ''Status of Development of NRC's Pre-Closure Safety Assessment Tool.''

4 p.m.–4:45 p.m.: Past Waste Confidence Decisions (Open)—The Committee will hear a briefing by the NRC staff on waste confidence decisions (findings) made by the Commission prior to 1999.

4:45 p.m.–5:15 p.m.: ACNW Low-Level Waste White Paper: Draft 3 (Open)—The Committee will comment on the third draft of the white paper on low-level waste.

5:15 p.m.–5:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities, and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 18, 2004 (69 FR 61416). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Ms. Sharon A. Steele, (Telephone 301–415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Ms. Steele as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore, can be obtained by contacting Ms. Steele.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 14, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–3857 Filed 7–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on August 4, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, August 4, 2005—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather

information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Sharon A. Steele (Telephone: (301) 415–6805) between 8 a.m. and 5:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: July 14, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–3859 Filed 7–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on August 24 and 25, 2005, U.S. NRC Region II, Sam Nunn Atlanta Federal Center, 23 T85, 61 Forsyth Street, SW., Atlanta, Georgia.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 24, 2005—1:30 p.m. until the conclusion of business

Thursday, August 25, 2005—8:30 a.m. until the conclusion of business

The Subcommittee will discuss regional inspection, enforcement, and operational activities. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:30 p.m. (ET). Persons planning to attend this meeting are urged to contract the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 14, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–3858 Filed 7–19–05; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting, July 21, 2005, Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 70, Number 127, Page 38731) on July 5, 2005. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's July 28, 2005 Board of Directors meeting scheduled for 2 a.m. on July 21, 2005 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: July 18, 2005.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 05–14409 Filed 7–18–05; 2:36 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection, Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Rule 17Ad–3(b), SEC File No. 270–424, OMB Control No. 3235–0473.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–3(b): Notice to Issuers of Non-Compliance With Transfer Agent Turnaround Standards

Rule 17Ad–3(b) requires registered transfer agents that for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) To provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions for the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of

the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: July 13, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3864 Filed 7–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–2(d); SEC File No. 270–36; OMB Control No. 3235–0028.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(d) was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of the rule (i) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') be maintained, (ii) permits the designated examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purpose for Rule 17f–2 is: (i) to identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the Rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprint are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 9,468 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 32 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years. The Commission estimates that the total annual cost to submitting entities is approximately $196,850. This figure reflects estimated costs of labor and storage of records.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

Dated: July 13, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3865 Filed 7–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of NetCurrents Information Services, Inc.; Order of Suspension of Trading

July 15, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NetCurrents Information Services, Inc., because the company is delinquent in its periodic filing obligations under section 13(a) of the Securities Exchange Act of 1934 and because of possible manipulative conduct occurring in the market for the company's stock. NetCurrents Information Services, Inc. last filed an annual report on Form 10–KSB for the year ended December 31, 2000, and last filed a quarterly report on Form 10–QSB for the quarter ended September 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the common stock (ticker symbol NCIS) and Series A 8.5% convertible preferred stock (ticker symbol NCISP) of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. e.d.t. on July 15, 2005, through 11:59 p.m. e.d.t. on July 28, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14305 Filed 7–15–05; 4:26 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Secure Solutions Holdings, Inc.; Order of Suspension of Trading

July 15, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Secure Solutions Holdings, Inc., (''SSLX'') because of questions regarding the accuracy of assertions by SSLX and others in SSLX's press release concerning, among other things, the identify of the management and directors of the company and the status of its corporate organizations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m., e.d.t., July 15, 2005, through 11:59 p.m., e.d.t., on July 28, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14306 Filed 7–26–05; 4:26 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52028; File No. SR–CBOE–2005–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Increasing the Class Quoting Limit in Options on DIAMONDS®

July 13, 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 June 22, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) 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

The CBOE proposes to increase the class quoting limit in options on DIAMONDS® (''DIA''). The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits (''CQLs'') for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

CBOE Rule 8.3A.01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as ''substantial trading volume, whether actual or expected.''[6] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL for options on DIA, which CBOE added to its Hybrid Trading System effective as of June 23, 2005. Specifically, the Exchange proposes to increase the CQL in DIA options by 5, from 25 to 30.

DIA options are actively traded Exchange-Traded Funds on the Exchange, and there is substantial trading volume in them, which CBOE anticipates will increase as DIA options are traded on the Hybrid Trading System. Increasing the CQL in DIA options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets. The Exchange represents that it will comply with all of the requirements of CBOE Rule 8.3A in increasing the CQL in DIA options and, if it determines subsequently to reduce such CQL, in reducing the CQL in such options.[7] Changes to the CQL will be announced to the membership via Information Circular.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5),[9] which require the rules of an exchange to be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* CBOE Rule 8.3A.01.

[6] ''Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act.'' CBOE Rule 8.3A.01(c).

[7] The Exchange has represented that it will follow the procedures outlined in CBOE Rule 8.3A.01(a) for assigning a new CQL, based on revised trading volume statistics, at the end of the calendar quarter, and that if the new CQL is lower than the increased CQL assigned as a result of this proposed rule change, the procedures outlined in CBOE Rule 8.3A.01(a) will be followed. Telephone conversation between Patrick Sexton, Assistant General Counsel, CBOE and Edward Cho, Attorney, Division of Market Regulation, Commission (July 6, 2005).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(i) of the Act[10] and Rule 19b–4(f)(1) thereunder,[11] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–49. 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 CBOE. 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–CBOE–2005–49 and should be submitted on or before August 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3860 Filed 7–19–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52027; File No. SR–ISE–2005–30]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a One-Year Pilot Extension for the Price Improvement Mechanism

July 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2005, the International Securities Exchange, Inc. (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. On July 13, 2005, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot periods contained in paragraphs .03 and .05 of the Supplemental Material to ISE Rule 723. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

Rule 723. Price Improvement Mechanism for Crossing Transactions

(a) through (d) no change.

Supplementary Material to Rule 723

.01 through .02 no change.

.03 Initially, and for at least a Pilot Period expiring on July 18, [2005] *2006*, there will be no minimum size requirements for order*s* to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size order*s* within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement Mechanism, and there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 no change.

.05 Paragraphs (c)(5), (d)(5) and (d)(6) will be effective for a Pilot Period expiring on July 18, [2005] *2006*. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made corrections to the proposal's rule text. The effective date of the original proposed rule change is July 8, 2005, and the effective date of Amendment No. 1 is July 13, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 13, 2005, the date on which the ISE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

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 pilot periods provided in paragraphs .03 and .05 of the Supplementary Material to ISE Rule 723 expire on July 18, 2005.[6] Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. The Exchange proposes to extend these pilots for one year to give the Exchange and the Commission additional time to evaluate the effects of the provisions before requesting permanent approval of the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the Price Improvement Mechanism has only been operating for a few months, the Exchange believes it is appropriate to extend the pilot periods to provide the Exchange and the Commission more data upon which to evaluate the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

[6] *See* Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004); and 51424 (March 23, 2005), 70 FR 16321 (March 30, 2005).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change, as amended, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposal.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the pilot periods to continue without interruption until July 18, 2006.[14] For this reason, the Commission designates that the proposal become operative immediately.

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–30. 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 ISE. 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–ISE–2005–30 and should be submitted on or before August 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3863 Filed 7–19–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52026; File No. SR–NYSE–2005–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Extend the Closing Time of Crossing Session II, and To Amend Its Crossing Sessions III and IV To Eliminate the Share Size Restriction and the Process by Which an Order Is Executed if There Is No Execution Prior to 4 p.m.

July 13, 2005.

On April 8, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend rules governing its Off-Hours Trading Facility (''OHTF''), Crossing Sessions II, III, and IV, in particular. On May 19, 2005, NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change as amended, was published for comment in the **Federal Register** on June 8, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The NYSE proposes to amend rules governing its OHTF. The proposed rule change would (1) extend the closing time of Crossing Session II from 6:15 p.m. to 6:30 p.m., and (2) amend rules governing Crossing Sessions III and IV to (i) eliminate the 10,000 share size restriction for both types of orders in Crossing Sessions III and IV, and (ii) provide that if there is no execution prior to 4 p.m, the entire order would be eligible for execution in the crossing session, rather than just the portion of the customer's order that could not be executed prior to 4 p.m.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6 of the Act [6] and the rules and regulations thereunder. Specifically, the Commission finds the proposal to be consistent with section 6(b)(5) of the Act,[7] in that is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the changes should enhance the usefulness and practicality of Crossing Session II by making it available to member organizations for a greater time period and making its closing time consistent with the closing time of Crossing Sessions III and IV. Additionally, the Commission believes that the elimination of the size restriction for orders in Crossing Sessions III and IV should increase the availability of these sessions to member organizations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2005–26), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14235 Filed 7–19–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifying changes to the Purpose section of the filing.

[4] *See* Securities Exchange Act Release No. 51747 (May 26, 2005), 70 FR 33571 (June 8, 2005) (SR–NYSE–2005–26).

[5] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52024; File No. SR–PCX–2005–82]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges

July 13, 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 June 28, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The PCX has designated this proposal as one changing a fee imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) 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

The PCX proposes to amend its Schedule of Fees and Charges For Exchange Services (''Schedule'') in order to modify the Exchange's marketing fee program. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rules of the Pacific Exchange, Inc.

* * * * *

PCX OPTIONS: TRADE-RELATED CHARGES

MARKETING CHARGE—For Nasdaq-100 Tracking Stock Options (QQQQ) $0.95 per contract side on all Market Maker transactions (excluding Market Maker to Market Maker transactions) and for Standard and Poor's Depository Receipts (SPY) $1.00 per contract side on all Market Maker transactions (excluding Market Maker to Market Maker transactions). For all other PCX Equity Options: $0.[60]45 per contract side on transactions of Lead Market Makers and Market Makers against *all public* customer orders [from payment accepting firms in the Exchange program].

[Cap on Marketing Charge—$200 per trade except for trades of Standard and Poor's Depository Receipts SPY and QQQQ. There is no cap on marketing charges for trades of SPY and QQQQ.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule in order to modify the Exchange's marketing fee program. Currently, except for transactions involving options on the NASDAQ–100 Tracking Stock (''QQQQ'') and Standard and Poor's Depository Receipts (''SPY''), the Exchange collects $0.60 per contract for all transactions that are made between a Lead Market Maker (''LMM'') or a Market Maker against customer orders from payment accepting firms in the Exchange program.

The Exchange proposes to modify its current program by reducing the marketing fee from $0.60 per contract for trades made with customer orders from payment accepting firms in the Exchange program to $0.45 per contract for all public customer orders. The proposed change does not affect the Exchange's marketing fee program for trades involving options on the QQQQ and SPY. The marketing fee for options on the QQQQ and SPY is not being amended. Currently, the Exchange also caps marketing charges at $200 for all trades not involving options on the QQQQ or SPY. In addition to the rate change, the Exchange is proposing to eliminate the $200 per trade cap.

The Exchange states that the purpose of the change in the marketing fee is to help the Exchange's marketing fee program remain competitive with the programs currently in place at other exchanges. Specifically, a number of other exchanges assess marketing charges across a broader spectrum of customer orders instead of limiting the charges to transactions where the PCX Market Maker trades against a payment receiving firm. While the proposed rate change will provide LMM's with competitive amounts of capital to attract order flow, it is also believed that a universally applied rate will help market makers better understand the total cost of the trade.

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 [5] in general, and Section 6(b)(4) of the Act [6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its OTP Holders and other persons using its facilities for trading option contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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–2005–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–82. 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–2005–82 and should be submitted on or before August 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3861 Filed 7–19–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0432]

Telesoft Partners II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to BayPackets, Inc. The financing is

contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P., Telesoft Partners IA, L.P. and Telesoft NP Employee Fund, LLC, all Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of BayPackets, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–14194 Filed 7–19–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5138]

Culturally Significant Objects Imported for Exhibition; Determinations: ''The Origins of European Printmaking: 15th Century Woodcuts and Their Public''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''The Origins of European Printmaking: 15th Century Woodcuts and Their Public,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about September 4, 2005, to on or about November 27, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 13, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–14276 Filed 7–19–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–177]

Notice of Request for Extension of Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by September 19, 2005.

ADDRESSES: You may submit comments identified by DOT–DMS Docket Number OST–95–177 by any of the following methods.

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except 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 information collection. For detailed instructions on submitting comments and additional information, 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 on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Change-of-Gauge Services.

OMB Control Number: 2105–0538.

Expiration Date: September 30, 2005.

Type of Request: Extension of a previously approved collection.

Abstract: Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. In addition to one-flight-to-one-flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. As with one-for-one-change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers, one for each segment with which it connects and one for the local market in which it operates. The Department recognizes various public benefits that can flow from change-of-gauge services, such as a lowered likelihood of missed connections. However, although change-of-gauge flights can offer valuable consumer benefits, they can be confusing and misleading unless consumers are given reasonable and timely notice that they will be required to change planes during their journey.

Section 41712 of Title 49 of the U.S. code authorizes the Department to decide if a U.S. air carrier or foreign air carrier or ticket agent (including travel agents) has engaged in unfair or

deceptive practices and to prohibit such practices. Under this authority, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. Among these are the CRS regulations contained in 14 CFR part 255.

The Department's current CRS rules, adopted in September of 1992, required that CRS displays give notice of any flight that involves a change of aircraft *en route*. In addition, the Department requires as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights. (See Department Order 89–1–31, page 5.) The Department proposed to adopt the extant regulations, however, because it was not convinced that these rules and policies resulted in effective disclosure all of the time.

Respondents: U.S. air carriers, foreign air carriers, ticket agents (including travel agents), and the traveling public.

Estimated Total Annual Burden on Respondents: 205,908 to 617,736 hours.

Estimated Number of Respondents: 33,898 excluding travelers.

Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated 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 July 12, 2005.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 05–14233 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–179]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 10, 2005 [FR Vol. 70, No. 89, pages 24670 and 24671]. No comments were received.

DATES: Comments on this notice must be received by August 19, 2005 attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Code-sharing Arrangements and Long-term Wet Leases.

OMB Control Number: 2105–0537.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), travel agents doing business in the United States, and the traveling public.

Annual Estimated Burden: 424,994 hours.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated 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 July 14, 2005.

Michael A. Robinson,

Information Technology Program Management, United States Department of Transportation.

[FR Doc. 05–14234 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 21–16E, RTCA, Inc. Document RATCA/DO–160E, Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on Advisory Circular (AC) 21–16E, RTCA, Inc. Document (RTCA/DO)–160E, Environmental Conditions and Test Procedures for Airborne Equipment. This AC tells those applicants seeking approval for type certificates, supplemental type certificates, and technical standard order (TSO) authorizations, that RTCA/DO–160E, dated December 9, 2004, is the latest version of RTCA/DO–160 containing acceptable environmental qualifications for showing compliance with airworthiness requirements.

DATES: Comments must be received on or before August 19, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Ms. Dara Gibson. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Dara Gibson, AIR–130, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 385–4632, fax: (202) 385–4651. Or, via e-mail at: *dara.gibson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the AC listed in this notice by submitting such written data, views, or arguments as they desire to the above

specified address. Comments received on the AC may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all communications received on or before the closing date before issuing the final AC.

Background

When following the guidance and procedures outlined in RTCA/DO–160E, Environmental Conditions and Test Procedures for Airborne Equipment, dated December 9, 2004, you are assured your airborne equipment will perform its intended functions by demonstrating compliance with the appropriate airworthiness regulations. Compliance is assured by adhering to the instructions contained in RTCA/DO–160E, which specifies a series of minimum standard environmental test conditions and applicable test procedures for airborne equipment. The purpose of the tests is to determine the performance characteristics of airborne equipment in environmental conditions representative of those that may be encountered in airborne operation of the equipment.

How To Obtain Copies

You may get a copy of the AC from the Internet at: *http://www.airweb.faa.gov/rgl.* Once on the RGL Web site, select ''Advisory Circular'', then select the document by number. *See* section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail. You may inspect the RTCA document at the FAA office location listed under **ADDRESSES**. Note however, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc. You may purchase copies of RTCA, Inc. documents from: RTCA, Inc., 1828 L Street, NW., Suite 815, Washington, DC 20036, or directly from their Web site: *http://www.rtca.org/.*

Issued in Washington, DC, on July 13, 2005.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–14253 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.856–1, Thermal/Acoustic Insulation Flame Propagation Test Method Details

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular (AC) 25.856–1.

SUMMARY: This AC provides methods acceptable to the Administrator for showing compliance with the revised airworthiness standards concerning new fire protection requirements applicable to thermal/acoustic insulation materials. The guidance in this AC describes a test method to determine the flammability and flame propagation characteristics of thermal/acoustic insulation materials on transport category airplanes.

How to Obtain Copies: A paper copy of AC 25.856–1 may be obtained by writing to the U.S.Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone (301) 322–5377, or faxing your request to the warehouse at (301) 386–5394. The AC also will be available on the Internet at *http://www.airweb.faa.gov/rgl.*

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14252 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–40]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 9, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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 Federal holidays.

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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 14, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2001–9230.

Petitioner: Airliners of America, Inc.

Section of 14 CFR Affected: 14 CFR part 119.

Description of Relief Sought: To permit Airliners of America, Inc., to operate its restored Martin 4–0–4 (registration No. N636X, serial No. 14135), which is certificated in the standard airworthiness category, for the purpose of carrying passengers for compensation or hire.

[FR Doc. 05–14250 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–41]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 1, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2005–21786) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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 Federal holidays.

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: Kenna Sinclair (425) 227–1556, Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on July 14, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–21786.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 25.855(b), 25.855(h)(2), 25.857(e)(2), and 25.857(e)(3).

Description of Relief Sought: Relief from the design and performance requirements regarding fire protection systems for the main deck cargo compartment on Boeing Model 747–400 large cargo freighters.

[FR Doc. 05–14249 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–2000–7918, FMCSA–2001–9258, FMCSA–2001–9561, FMCSA–2002–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 8, 2005. Comments from interested persons should be submitted by August 19, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–4334, FMCSA–2000–7918, FMCSA–2001–9258, FMCSA–2001–9561, and FMCSA–2002–13411 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket numbers for this notice. 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 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: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation'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.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 25 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 25 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Roger D. Anderson, Joey E. Buice, Ronald D. Danberry, Paul W. Dawson, Lois E. De Souza, Tomie L. Estes, Jay E. Finney, Steven A. Garrity, Waylon E. Hall, Britt D. Hazelwood, Jeffrey M. Kimsey, Robert C. Leathers, Richard L. Leonard, Larry T. Morrison, Gerald L. Phelps, Jr., Ronald F. Prezzia, Thomas G. Raymond, Tim M. Seavy, Kim L. Seibel, Randy D. Stanley, Lee T. Taylor, James M. Tayman, Sr., Wesley E. Turner, Kevin L. Wickard, John C. Young.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. §§ 31315 and 31136(e), each of the 25 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 65 FR 66286; 66 FR 13825; 68 FR 10300; 66 FR 17743; 66 FR 33990; 68 FR 35772; 66 FR 30502; 66 FR 41654; 67 FR 76439; 68 FR 10298). Each of these 25 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 19, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: July 13, 2005.

Larry W. Minor,

Office Director, Bus and Truck Standards and Operations.

[FR Doc. 05–14258 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34719]

Cornhusker Railways LLC—Acquisition and Operation Exemption—Rail Line of DTE Rail Services, Inc.

Cornhusker Railways LLC (CHR), a noncarrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by purchase from DTE Rail Services, Inc. (DTERS) and operate approximately 5.0 miles of rail line, as well as certain related yard, industry, side and spur tracks, between an interchange with BNSF Rail Company (BNSF) at milepost 103.55 near Ovina, and an interchange with Union Pacific Railroad Company (UP) at milepost 154.5 near Alda, in Hall County, NE.[2]

CHR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

Consummation was scheduled to take place shortly after the effective date of the exemption (the exemption became effective June 27, 2005, 7 days after filing).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] CHR is controlled by noncarrier DTE Coal Services, which does not control any other carriers.

[2] DTERS purchased the line along with certain other adjacent rail facilities and associated structures from the U.S. Government in 2004 for use in the construction and operation of a railcar repair facility. The line connects with BNSF and UP, and DTERS has used the line as a private spur for the transfer of railcars between its shops and the two railroads. Under the proposed transaction, CHR will purchase both the track and the underlying right-of-way and will grant a non-exclusive, immediately terminable lease of the line back to DTERS for DTERS' non-common carrier use. CHR will retain the responsibility and the ability to provide common carrier service by means of reserved joint use rights.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34719, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on C. Michael Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 5, 2005.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–14052 Filed 7–19–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 243X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Forsyth County, NC

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.4-mile line of railroad between milepost R–124.2, and milepost R–126.6, located in Winston-Salem, Forsyth County, NC. The line traverses United States Postal Service Zip Codes 29302 and 29306.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment 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 August 19, 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 August 1, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 9, 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 NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 25, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by July 20, 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: July 11, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–14077 Filed 7–19–05; 8:45 am]

BILLING CODE 4915–01–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 OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 261X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Spartanburg, SC

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.92-mile line of railroad between former milepost W 68.69 and former milepost W 70.61, in Spartanburg, SC.[1] The line traverses United States Postal Service Zip Codes 27101, 27104, 27105, and 27107.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—*

[1] NSR states that the line mileposts are described as former because a new main line replaced the subject line as the main line many years ago and that the construction of the new main line resulted in the subject line becoming a stub-end branch line. NSR also states that the milepost numbers were reused on the new line and no new milepost designations were given to the subject line.

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 August 19, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 1, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 9, 2005, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR 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 July 25, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by July 20, 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: July 11, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–14078 Filed 7–19–05; 8:45 am]

BILLING CODE 4915–01–P

[2] 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.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Request for OMB Clearance of an Information Collection; Customer Satisfaction Surveys Program

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), Department of Transportation, (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment to the Office of Management and Budget (OMB) on continuing need for and usefulness of BTS' Customer Satisfaction Surveys. This collection request has been published in the **Federal Register** March 31, 2004 on page 17031 with a 60 day comment period ending May 30, 2004. The 60 day notice produced no comments. This collection is now being submitted to OMB for approval.

DATES: Written comments should be submitted by August 19, 2005.

ADDRESSES: You may submit a comment (identified by OMB Number 2139–0007) to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Putman, Office of Survey Programs, K–23, Room 4432, Bureau of Transportation Statistics, Research and Innovative Technology Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–5336.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0007.

Title: Customer Satisfaction Surveys.

Form No.: None.

Type of Review: Revision to a currently approved collection.

Respondents: U.S. households.

Number of Respondents: 22,000.

Estimated Time per Response: 5–17 minutes.

Total Annual Burden: 8700 hours (estimate).

Needs and Uses: In 1993, Executive Order #12862 was implemented by the President to insure the highest quality service possible to the American people. Federal agencies are required to establish and implement customer service standards to guide the operations of the agency, to judge the performance of the agency, and to make appropriate resource allocations. To fulfill the requirements of this mandate, the Bureau of Transportation Statistics (BTS) immediately implemented plans and requirements for measuring customer satisfaction with BTS and Department of Transportation programs and services. As the statistical agency of the Department of Transportation, BTS is charged with fulfilling a wide variety of user needs. BTS has implemented a wide range of customer satisfaction surveys. The approaches include the Omnibus Survey Programs and the BTS Customer Satisfaction Survey, all of which are covered by this clearance request. Consistent with the requirements of Executive Order #12862, BTS plans to continue data collections at several levels to better assess and evaluate customer satisfaction within products, services, and overall performance of the agency over the next three years.

Description of Survey Topics: The Omnibus Surveys Program is comprised of several different surveys—A Household Survey and periodic targeted surveys. The primary purpose of the Omnibus Household Survey are: (1) To determine the public's level of satisfaction with the nation's transportation system in light of the Department's strategic objectives, (2) to determine the public's satisfaction with the Department of Transportation products and services; and (3) to be a vehicle for the Operation Administrations within the Department of Transportation and other government agencies to survey the public about Administration-specific topics.

The Omnibus targeted surveys are designed on an ''as needed'' basis to address specific, emerging transportation issues. Although there is no schedule for such surveys, this

submission requests clearance for a maximum of 8 targeted surveys per year. In the past, BTS has conducted such targeted surveys as the Mariner's Survey (which collects data about the Merchant Marines to be used in the event of a national emergency), the Highway User Survey (which collects data on highway usage) and the Bicycle/Pedestrian Survey (which collects data on bicycle usage and on walking as transportation). Data collection for targeted surveys may be one time only or recurring.

The BTS Customer Satisfaction Survey was implemented in 1998. The resulting data identified customers who are served by the Bureau of Transportation Statistics; determined the kind of quality of services they want; and measured their level of satisfaction with existing services. The surveys covered by this request do not duplicate information currently being collected by any other agency or component within the Department of Transportation. The information to be collected by these surveys is not currently available in any other format or from any other source or combination of sources.

Burden Statement: The total annual respondent burden estimate is 8,700 hours. The number of respondents and average burden hour per response will vary with each survey.

Issued in Washington, DC, on July 13, 2005.

Michael P. Cohen,

Assistant Director, Survey Programs, Research and Innovative Technology Administration, Bureau of Transportation Statistics.

[FR Doc. 05–14232 Filed 7–19–05; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 8, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 19, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0096.

Form Numbers: IRS Forms 1042, 1042-S and 1042-T.

Type of Review: Extension.

Title: Form 1042: Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; Form 1042–S: Foreign Person's U.S. Source Income Subject to Withholding; and Form 1042–T: Annual Summary and Transmittal of Forms 1042–S.

Description: Form 1042 is used by withholding agents to report tax withheld at source on certain income paid on nonresident alien individuals, foreign partnerships, and foreign corporations to the IRS. Form 1042-S is used by withholding agents to report income and tax withheld to payees. A copy of each 1042–S is filed magnetically or with /form 1042 for information reporting purposes. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States. Form 1042–T is used by withholding agents to transmit Forms 1042–S to the IRS.

Respondents: Business and other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 22,000.

Estimated Burden Hours Respondent/Recordkeeper:

Form	Record-keeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1042	9 hr., 48 min.	2 hr., 25 min.	4 hr., 33 min.	32 min.
1042–S	0 min.	0 min.	25 min.	0 min.
1042–T	0 min.	0 min.	12 min.	0 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,056,940. hours.

OMB Number: 1545–1393.

Regulation Project Number: EE–14–81 NPRM.

Type of Review: Extension.

Title: Deductions and Reductions in Earnings and profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

Description: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. Respondents will be multinational corporations.

Respondents: Business and other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,250.

Estimated Burden Hours Respondent/Recordkeeper: 508 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 634,450 hours.

OMB Number: 1545–1484.

Regulation Project Number: REG–242282–97 Final (formerly INTL–62–90, INTL–32–90, INTL–52–86 and INTL 52–94).

Type of Review: Extension.

Title: General Revision of Regulations Relating to Withholding of Tax on U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties.

Description: The regulations are needed to provide guidance relating to the withholding of income of nonresident alien individuals and foreign corporations.

Respondents: Business and other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal government, State, local or tribal government.

Estimated Number of Respondents/Recordkeepers: 1.

Estimated Burden Hours Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1772.

Form Number: IRS Form 8717.

Type of Review: Extension.

Title: User Fee for Employee Plan/determination Letter Request.

Description: The Omnibus Reconciliation Act of 1990 requires payment of a ''user fee'' with each application for a determination letter. Because of this requirement, the Form 8717 was created to provide filers the means to make payment and indicate the type of request.

Respondents: Business and other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Respondent: 3 hours, 24 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 341,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–14230 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 13, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 19, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1677.

Regulation Project Number: REG0136311–01 Final.

Type of Review: Extension.

Title: Exclusions from Gross Income of Foreign Corporations.

Description: This document contains rules implementing the portions of section 883(a) and (c) of the Internal Revenue Code that relate to income derived by foreign corporations from the international operation of a ship or ships or aircraft. The rules provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of United States Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. This regulation describes these documentation requirements and the filing requirements necessary for a foreign corporation to claim a reciprocal exemption.

Respondents: Business and other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 16,400.

Estimated Burden Hours Respondent/Recordkeeper: 1 hour, 27 minutes.

Frequency of Response: On occasion, Annually, Other (certain shareholder information may be collection once every three years).

Estimated Total Reporting/Recordkeeping Burden: 23,900 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–14231 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209827–96 and REG–111672–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209827–96 and REG–111672–99 (TD 8834), Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2) (§§ 1.367(e)–1, 1.367(e)–2 and 1.6038B–1).

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, at (202) 622–3179, or at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: REG–209827–96 and REG–111672–99.

Abstract: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers. This information is used by the Internal Revenue Service to verify whether a taxpayer is entitled to an exemption from income tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 217.

Estimated Time per Respondent: 11 hours, 23 minutes.

Estimated Total Annual Burden Hours: 2,471.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

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

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3847 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Notice 123059–05]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 123059–05, Limitations on Dividends Received Deduction and Other Guidance.

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, at (202) 622–3179, or at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Dividends Received Deduction and Other Guidance.

OMB Number: 1545–1943.

Regulation Project Number: Notice 123059–05.

Abstract: This document provides guidance under new section 965, which was enacted by the American Jobs Creation Act of 2004 (Pub. L. 108–357). In general, and subject to limitations and conditions, section 975(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. This document addresses limitations imposed on the maximum amount of section 965(a) DRD under section 965(b)(1) (under which the maximum amount of an eligible dividend is the greatest of $500 million, or earnings permanently reinvested outside the United States), section 965(b)(2) (regarding certain base-period repatriations), section 965(b)(3) (regarding certain increases in related party indebtedness), and certain miscellaneous limitations (related to the foreign tax credit).

Current Actions: There is no change to this notice.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3849 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 10001

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 10001, Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue

Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

OMB Number: 1545–14922.

Form Number: 10001.

Abstract: Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax exempt advance refunding bonds. Revenue Procedure 96–41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 13, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3851 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–32, Conforming Adjustments Subsequent to Section 482 Allocations.

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Abstract: Revenue Procedure 99–32 provides guidance for conforming a taxpayer's accounts to reflect a primary adjustment under Internal Revenue Code section 482. The revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under Code section 482 from, or to, a related person with respect to a controlled transaction.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 1,620.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3855 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee 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, August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

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 Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Thursday, August 18, 2005, from 2 p.m. to 3 p.m. e.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: July 12, 2005.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3850 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 17, 2005, at 1 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, August 17, 2005, at 1 p.m. eastern time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006-MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or by FAX at 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: July 12, 2005.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3852 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee 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, August 9, 2005, from 2:30 p.m. to 3:30 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Tuesday, August 9, 2005, from 2:30 p.m. to 3:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: various IRS issues.

Dated: July 12, 2005.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3853 Filed 7–19–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 70, No. 138

Wednesday, July 20, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Final Supplemental Environmental Impact Statement for the Wyoming Valley Levee Raising Project, Wilkes-Barre, PA

Correction

In notice document 05–13855 beginning on page 40691 in the issue of Thursday, July 14, 2005, make the following correction:

On page 40692, in the first column, in the sixth paragraph, in the third line, the Web site address should read, ''*http://www.nab.usace.army.mil/publications/non-reg_pub.html*.''

[FR Doc. C5–13855 Filed 7–19–05; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51902; File No. SR–ISE–2005–19]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Membership Dues Fee

June 22, 2005.

Correction

In notice document 05–12886 beginning on page 37878 in the issue of Thursday, June 30, 2005, make the following correction:

On page 37878, in the third column, after the subject line, the date is added to read as set forth above.

[FR Doc. C5–12886 Filed 7–19–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 20, 2005

Part II

Department of Agriculture

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans; Interim Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB95

General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations to include provisions regarding the requests by approved insurance providers to implement the premium reduction plan authorized under section 508(e)(3) of the Federal Crop Insurance Act (Act) and the approval of the amount of a premium discount to be provided to farmers under the premium reduction plan.

DATES: Effective June 30, 2005.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lee Ziegler, Economist, Reinsurance Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, Room 6739–S, Washington, DC 20250; telephone number (202) 720–0191, e-mail address: *lee.ziegler@rma.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), RMA's request for emergency approval on a new information collection, Premium Reduction Plan, was approved under OMB control number 0563–0079.

Government Paperwork Elimination Act (GPEA) Compliance

In its efforts to comply with GPEA, FCIC requires all approved insurance providers delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with approved insurance providers electronically.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the states. The provisions contained in this rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because it merely clarifies the process to submit premium reduction plans to the FCIC Board of Directors for approval. The current requirements of the Standard Reinsurance Agreement (SRA) and procedures for premium reduction plans approved by the Board contain provisions to ensure that small entities have access to policies and plans of insurance, including premium reduction plans. The requirement to apply for a premium reduction plan is the same for small entities as it is for large entities. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith, unless otherwise specified in the rule. The appeals procedures at 7 CFR 400.169 and 7 CFR part 24 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On February 24, 2005, FCIC published a notice of proposed rulemaking in the **Federal Register** at 70 FR 9001–9013 to revise 7 CFR part 400, subpart V, Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. Approximately 1,900 comments were received from approved insurance providers, farmers, agents and other interested parties.

After consideration of all the comments and the concerns expressed, FCIC realizes it needs to proceed cautiously to ensure the continued access of farmers to crop insurance and stability of the delivery system for the federal crop insurance program. Not publishing a rule is not an option because section 508(e)(3) of the Act states that FCIC shall consider all applications of the approved insurance providers to participate in the premium reduction plan. To allow such application without ensuring that premium reduction plans are fair and equitable and do not endanger the delivery system would jeopardize the program far more than implementing a rule intended to protect these principles.

However, to allow itself the maximum flexibility in quickly making changes to the rule, should they become necessary, FCIC has elected to publish this rule as an interim rule. All the comments provided in response to the proposed rule were considered when developing

the interim rule. The Risk Management Agency (RMA), on behalf of FCIC, intends to operate the premium reduction plan program for the 2006 reinsurance year under the interim rule. This will allow time to determine how effectively the premium reduction plan program is operating. After sufficient time to experience the operation of the program, RMA will publish a separate notice soliciting comments. Such comments will then be considered when making the rule final.

When FCIC published the proposed rule, it specifically sought comments on certain provisions and proposals and sought comments on the proposed rule in general. The comments and responses have been categorized in accordance with the specific and general requests for comment. Further, RMA has used the term ''few'' to mean two commenters, ''several'' to mean three to nineteen commenters, and ''many'' to mean 20 or more commenters. These terms do not reflect the number of commenters in each category listed but the total for all categories.

A. Preamble

1. Alternative Proposal

In the preamble to the proposed rule, RMA suggested an alternative proposal that would require the approved insurance providers to base any premium discount on actual cost savings for the reinsurance year instead of projected savings. The proposal would operate similar to a dividend program with premium discounts provided after the costs savings were determined, which would be after the end of the crop year. This meant farmers would be required to pay the full premium when due and receive the premium discount at a later time. RMA was particularly interested in comments that addressed the benefits of using actual versus projected costs, impacts on the workload of the approved insurance providers and RMA, market conduct oversight requirements that may be required, impacts on competition, the delay in the reimbursements to farmers, whether such reimbursements create any income tax issues, or any other substantial adverse or positive effect of this approach in contrast to the approach included in the proposed rule. The comments received and FCIC's responses are as follows:

Comment: An agent commented that in a state that has a significant number of rebate laws, the alternate approach offered by RMA may raise issues about rebating. The commenter asks how this would affect implementation and assume RMA would resolve any rebate issue before implementation.

Response: Whether the premium reduction plan may be a form of rebating that is prohibited under most state laws is not material. Under section 506(l) of the Act, any state law that is in conflict with the Act or any regulation promulgated by FCIC is preempted. Section 508(e)(3) of the Act expressly authorizes approved insurance providers to pay premium discounts to farmers without reference to state law. This is in contrast to section 508(b)(5)(B) of the Act that authorizes cooperative and trade associations to pay all or a portion of the administrative fee on behalf of the farmer or provide a rebate as long as such rebate is permitted by the laws of the state. Since section 508(e)(3) of the Act does not waive federal preemption, the fact that such discounts may be considered a prohibited rebate under state law or provided to farmers in a manner similar to dividends that are regulated by the state does not override the express authority in section 508(e)(3) of the Act. The application of Federal preemption is consistent with section II.A.4. of the 2005 SRA and the approved procedures, which make it clear that state law only applies to rebating issues involving section 508(b)(5)(B) of the Act and that Federal preemption applies to all other aspects of rebating, including section 508(e)(3) of the Act.

Comment: Several agents, farmers, approved insurance providers and interested parties commented that any discount should be guaranteed up front and should be available to farmers whether or not the crop year is a good one or a bad one. Commenters state that if the discount is not guaranteed, farmers will not enter the program and farmers will not take the opportunity to increase coverage.

Response: RMA understands the position of the commenters and took that position in the proposed rule. However, as expressed more fully below, it has considered the other comments and its own concerns regarding the complexity and burdens on approved insurance providers and RMA of having to establish and evaluate projected savings, and the impact on the program if such savings are not realized and determined that the difficulties in administering the program outweigh the effect on farmers of not having the premium discount guaranteed up front and, therefore, has elected to adopt the alternative proposal in the interim rule. In adopting the alternative proposal, RMA understands that the premium reduction plan will likely lose some of its attraction to farmers if it is not guaranteed up front. However, at least farmers will be guaranteed a stable delivery system with the possibility of a premium discount, which if not available to purchase additional coverage for the current year, could be used to increase coverage in subsequent crop years. Under the proposed system, if the commenters are correct, there could be instability introduced into the delivery system. RMA does agree that the premium discount should be available regardless of whether the farmer suffers a loss and this is included in the interim rule.

Comment: Several agents, farmers, approved insurance providers and interested parties commented that farmers take enough risk with planting crops and hoping for a good crop year, so why should approved insurance providers who are experts at risk management, not be able to offer savings to farmers guaranteed upfront if they have the ability and option to do so. A commenter also stated that providing only the chance for discounts based on profitability will only confuse the farmers and open approved insurance providers to potential accounting irregularities to limit profits in order to avoid paying dividends.

Response: RMA disagrees with the commenter that approved insurance providers are more likely to engage in accounting irregularities under the alternative. First, the payment of a premium discount is not conditioned upon profitability of the approved insurance provider. It is conditioned upon the approved insurance provider reducing its cost to deliver the program to an amount below the amount of administrative and operating (A&O) subsidy paid by RMA. Second, the requirement that the approved insurance provider must have an independent professional audit and certify actual cost efficiencies provides less opportunity for accounting irregularities than the use of projected cost efficiencies, as established under the proposed rule. RMA also understands there may be concerns that the alternative may lead to confusion for some farmers regarding whether they will receive a premium discount. To prevent such confusion, the interim rule places specific restrictions on the advertising or promotion of the premium reduction plan to prevent approved insurance providers or agents from making promises regarding the payment of premium discounts that the approved insurance provider may not be able to keep. While recognizing that the alternative approach does not have the guaranteed benefits that the proposed

approach had, RMA had to weigh the potential problems with basing premium discounts on projected costs instead of actual costs.

Comment: An approved insurance provider commented that using appropriate business tools, approved insurance providers can accurately forecast (and demonstrate to the RMA) the amount of savings necessary to offer a premium reduction plan, and should be required to pass those savings—up-front—on to farmers. A commenter states that under the current structure, another core benefit to farmers is that competing approved insurance providers will market their various programs with specific discount information, thereby permitting farmers to make informed insurance purchasing decisions. The commenter states that the alternative approach eliminates this benefit.

Response: RMA agrees that the alternative approach does not have the full benefit of allowing farmers know what their premium discount will be up front. However, RMA is not as confident as the commenter that approved insurance providers can accurately forecast their savings each year. Certain costs are fixed but other costs, such as loss adjustment expense, are not. In order to qualify to pay a premium discount, the approved insurance provider has to be operating below A&O subsidy. In unusually bad loss years, it is possible that some or all projected savings could be spent on additional loss adjustment expenses. To require approved insurance providers to pay premium discounts in such years could financially weaken the crop insurance delivery system.

Comment: An interested party commented that there are problems with the alternative approach. The commenter states that farmers face too many other uncertainties and not knowing the savings until after the end of the end of the crop year just poses another one. The commenter also suggests that approved insurance providers would be reluctant to participate in the premium reduction plan because it could not use a specific discount when competing in the marketplace. The commenter suggested that RMA not publish the rule rather than risk the premium reduction plan undermining the delivery of the crop insurance program and fundamental principle of universal access.

Response: RMA shares the concerns of these commenters with respect to the alternative proposal—that farmers will face yet another uncertainty and that an uncertain discount will reduce marketing opportunities. However, the premium discount program is totally voluntary based on whether the approved insurance provider determines it makes sound business sense. RMA cannot structure the program to provide an incentive for approved insurance providers to participate if there is a possibility that such incentive would prove detrimental in the long run. Further, as stated above, farmers will still be receiving a benefit if the approved insurance provider attains the necessary savings, which can still provide an inducement to purchase insurance with a specific approved insurance provider so approved insurance providers still have an incentive to participate in the premium reduction plan. In addition, approved insurance providers will be able to advertise premium discounts paid in the previous reinsurance year to give farmers an indication of what premium discount they may be able to expect, although such advertising will be accompanied by appropriate disclaimers. RMA believes that the advantages of the alternative proposal outweigh the disadvantages.

With respect to not publishing the interim rule, section 508(e)(3) of the Act requires RMA to accept any request by an approved insurance provider to participate in the premium reduction plan. Not publishing the interim rule would mean that the premium reduction plan would continue under the existing RMA procedures—procedures that the FCIC Board of Directors (Board) has determined to be unsatisfactory—or revised procedures. RMA disagrees with the commenter that the interim rule would undermine the delivery of crop insurance and universal access. As outlined in RMA's responses to the other comments, the interim rule includes provisions that ensure universal access and protect the delivery of crop insurance.

Comment: An approved insurance provider commented that a core benefit to the current structure is that it requires participating approved insurance providers to focus on administrative costs up front, to demonstrate savings that can be achieved, and to impose the necessary mechanisms to achieve them. The commenter states that the alternative structure eliminates this incentive and discourages providers from identifying, designing and implementing necessary cost-saving mechanisms and practices before the savings can be realized.

Response: While it may have been beneficial for RMA to know how approved insurance providers were cutting their costs when the premium discounts were based on projected costs, the same need does not exist under the alternative proposal. RMA will be looking at the cost savings after they have been realized. Further, it is up to the approved insurance provider with respect to whether its operation will support cost cutting measures sufficient to allow the payment of a premium discount. However, approved insurance providers that offer a premium discount plan but fail to deliver any premium discounts would likely find themselves losing business to approved insurance providers who do pay premium discounts. Therefore, there is still an incentive to implement the cost-saving measures.

Comment: An agent commented that agents and approved insurance providers should not be given discretion over discounts. The commenter stated that other lines of insurance allow agents and approved insurance providers to price business based on the ''merits'' of the business. The commenter stated that pricing flexibility is not based on the merit of an account but used as a marketing tool. Once consumers make this discovery, then agents are pitted against each other from year to year when delivering proposals. The commenter stated this is not something likely to happen as it does not provide a documentable reason for the discount.

Response: RMA agrees that the ability of an agent to use a projected premium discount, rather than a premium discount based on actual cost savings, raises a cause for concern with respect to the marketing of the agent's services. Under the alternative proposal adopted in the interim rule, agents would not be able to promise a premium discount. The agent could provide policyholders with a history of actual premium discount payments that have been documented by the approved insurance provider, but would be strictly prohibited from inferring that policyholders would, in fact, receive a premium discount in the future.

Comment: An approved insurance provider commented that the alternative proposal was conceptually interesting, but inconsistent with prospective rating methods used for virtually all other insurance products. It would only be modestly easier to validate and assign a dollar value to efficiencies post-policy period as opposed to prior to it. The commenter stated that the plan would probably invite intimations during sales process of anticipated efficiencies at least as great as any other approved insurance provider—and if so would cause confusion to the farmer.

Response: As an initial matter, the premium reduction plan has nothing to

do with the rating methodology. The dollar amount of premium to cover the risk of loss and a reasonable reserve remains unchanged. The only thing that may change is that portion of the premium paid by the farmer. Under the alternative adopted in the interim rule, the farmer would pay the entire amount of the farmer paid portion and later receive a discount from the approved insurance provider. Further, it would be much simpler to validate the savings after they have been achieved. First, the total A&O costs reported on the Expense Exhibits to the SRA is compared with the amount of A&O subsidy received to determine whether the approved insurance provider is eligible to pay a premium discount. This would permit approved insurance providers whose current A&O costs exceed the A&O subsidy to still request to participate in the premium reduction plan because the payment of a premium discount is contingent upon the approved insurance provider sufficiently reducing its costs. This cost accounting is simple and avoids the need to demonstrate up front that the approved insurance provider will reduce costs sufficiently to be able to pay a premium discount.

Second, the interim rule contains mechanisms to place all costs into one of three categories. Based on the category, the costs are allocated proportionally to the net book premium in the state or are reported in the Expense Exhibits by state. This process provides a simple transparent means to allocate costs and determine the amount of premium discount that can be paid in each state.

Third, as stated above, the interim rule contains restrictions on the manner in which the premium reduction plan can be promoted or advertised. Approved insurance providers will only be able to advertise actual premium discounts paid in the past reinsurance year and even those must be accompanied by a disclaimer that there is no guarantee such premium discount will be paid in the future.

Comment: Several interested parties commented that the alternative had too many loopholes, there were no controls over false promises or deceptive marketing practices, and there were no penalties for such conduct.

Response: RMA disagrees with the comment that the alternative has too many loopholes. By requiring that premium discounts come from realized and certified cost efficiencies, the alternative in the interim rule is less subject to loopholes that the program outlined in the proposed rule, which permits premium discounts based on forecasts that might not be realized.

RMA agrees with the comments that false promises and potentially deceptive marketing practices are more likely to emerge from the alternative structure outlined in the interim rule than from the structure outlined in the proposed rule. As stated above, to address this, the interim rule incorporates specific marketing prohibitions. The interim rule also indicates that state insurance departments will be enlisted to play a role in the enforcement of market conduct. These departments currently have structured market conduct standards and enforcement arms, and can ensure that deceptive practices are identified, investigated, and penalties assessed to those who engage in them.

Comment: An agent asked if RMA is going to require all approved insurance providers to form into a mutual approved insurance provider so the insureds can receive the dividend. Minnesota has this requirement that for an insurance customer to qualify for a dividend they must be part of a mutual approved insurance provider. The commenter stated that most approved insurance providers in the MPCI market place now are private approved insurance providers and it is unlikely they would want to change to a mutual approved insurance provider.

Response: Neither the interim rule nor any other provision in section 508(e)(3) of the Act requires that approved insurance providers become mutual insurance companies to qualify for the premium reduction plan. Although state law may require insurance companies to be mutual insurance companies to be able to distribute dividends, the premium discount plan authorizes the payment of premium discounts, not dividends, even though they may be paid at a similar time as a dividend. Further, section 508(e)(3) of the Act provides RMA with the authority to allow approved insurance providers to offer premium discounts without being a mutual insurance company and such authority will preempt state law in accordance with section 506(l) of the Act.

Comment: An interested party commented that dividend plans may have an adverse impact on approved insurance provider participation if the procedures established by RMA enable one or more approved insurance providers to obtain a competitive advantage over the other approved insurance providers. Dividend plans may also adversely affect customer service if the efficiencies are achieved through reductions in training or other service related functions.

Response: Although similar to a dividend plan in other lines of insurance, the premium reduction plan is not a dividend plan. The premium reduction plan is a plan that offers a premium discount to farmers based on the efficiencies attained by the approved insurance provider. Further, under the alternative approach, approved insurance providers are placed in a more equal position because they will not have to prove up front that they can deliver the program for less than their A&O subsidy. This means that all approved insurance providers can request to participate in the premium reduction plan although only those approved insurance providers that attain sufficient savings can provide a premium discount under such a plan. In addition, under either approach, service and training cannot be reduced below what is necessary to meet the requirements in the SRA regarding service, which are generally contained in procedures such as the Crop Insurance Handbook and the Loss Adjustment Manual, and training requirements that are generally contained in Appendix IV to the SRA. This is the minimum level of service that RMA determines is necessary to properly deliver the crop insurance program. To the extent that service currently exceeds these standards, RMA cannot take any action against any approved insurance providers who do not participate in the premium reduction plan and who reduce such service to the level required to comply with the SRA and approved procedures. There is no difference under the premium reduction plan. RMA will be looking at whether approved insurance providers are violating the standards of service required by the SRA. If such a violation occurs, RMA can withdraw its determination that an approved insurance provider is eligible to participate in the premium reduction plan or approval of a premium discount, or take such other action as authorized under the SRA.

Comment: Several interested parties commented that while the dividend plan approach is more workable than the up-front premium discount approach, both approaches suffer from some of the same difficulties. A commenter states that the same issues with recordkeeping, accounting practices, and monitoring issues still exist with the alternative. A commenter stated that after further review, the dividend plan approach should not be pursued at this time, and that RMA should conduct additional study to more carefully evaluate whether these difficulties can be resolved through careful design of any procedures used to

implement the premium reduction language in the Act.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. Further, the interim rule simplifies many of the recordkeeping and accounting practices that would have been required under the approach included in the proposed rule. Savings and the amount of any premium discount will be determined using the Expense Exhibits provided with the SRA each reinsurance year. Further, the procedures accompanying the interim rule contains specific allocation requirements for certain costs that will simplify the determination of whether a premium discount can be paid. There still will be monitoring requirements but the accounting and recordkeeping burdens are greatly reduced. RMA intends to test this concept out through the interim rule and then seek additional comments to determine if further refinement is required.

Comment: Several agents, approved insurance providers and interested parties commented that an approach using ''projected savings'' should not be implemented. Approved insurance providers that want to participate in a premium reduction plan should be required to ''show'' rather than ''project'' they can achieve cost savings while maintaining necessary service levels. A commenter stated that a dividend plan approach would have no effect on data collection, reporting, or reinsurance payments. Commenters stated that using actual costs evens the playing field, simplifies the program, eliminates unfair discrimination and stabilizes the program. A commenter stated that it is unlikely any approved insurance provider can accurately project costs. A commenter stated the alternative proposal will reduce the chance that approved insurance providers will not meet their projections and cause market disruption. A commenter stated that by delaying the payment until the full year results for the approved insurance provider were known, RMA could evaluate a proposal to pay dividends based on the financial condition of the approved insurance provider. For instance, RMA could elect to deny all dividend payments unless the approved insurance provider was profitable on an aggregate basis. A commenter stated that use of projected costs will open RMA up to the overestimation of savings that can be used to cherry pick farmers.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA believes that a rule based on actual cost efficiencies has both advantages and disadvantages over the current premium reduction plan based on projected savings that must be later confirmed with actual costs. As stated more fully above, RMA agrees with the commenters that the interim rule should be based on actual rather than, as it is currently operating, projected savings. RMA also agrees that the alternative will reduce the chance that approved insurance providers will not meet their projections and cause market disruption and that the delay in approving the premium discount would give RMA time to determine that all requirements in the rule were satisfied and to evaluate the financial condition of the approved insurance provider. RMA agrees that by using actual rather the projected costs, the verification burden placed on RMA would be reduced; that the potential for accounting manipulations would be reduced; and that the program would be simplified and more stable. However, RMA is uncertain whether using actual rather than projected costs would necessarily even the playing field or eliminate unfair discrimination. Under either approach RMA would have to monitor the performance of approved insurance providers to ensure that all farmers in the states in which the premium reduction plan will be made available have access to the plan.

Comment: Several interested parties and approved insurance providers suggested that the alternative approach is similar to a dividend plan, which is common in the insurance industry. A commenter stated that distributing costs savings at the beginning of the policy year adds elements of uncertainty into the rate setting process because it is impossible for an approved insurance provider to know in advance what its actual costs savings will be and the alternative eliminates the uncertainty. A commenter stated this should not be allowed because farmers could not plan or budget for the discount. A commenter stated that any pre-advertised premium reduction plan which is based upon projected cost savings will lead to unfair discrimination by approved insurance providers, agencies, and agents.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. Further, RMA does not agree that basing the premium reduction plan on projected costs would unsettle rate setting because rates are based on expected losses and a reasonable reserve and premium discounts allowed under the Act are based on the reduction in costs below the amount of A&O subsidy paid by RMA. RMA understands the concerns of the commenter that the alternative proposal would not allow the farmer to plan or budget for the premium discount. However, as stated above, RMA believes that the advantages of using the projected cost approach are more than offset by the disadvantages. RMA also agrees that the alternative proposal will reduce the ability of approved insurance providers and agents to discriminate against small, limited resource, women or minority farmers because they cannot offer a guaranteed premium discount as an inducement to large farmers to purchase insurance. Further, the interim rule specifically requires that the approved insurance provider develop a separate marketing plan demonstrating how it will reach such farmers in addition to the efforts of its agents.

Comment: Several interested parties and approved insurance providers commented that dividends would not need changes to accounting rules. A commenter stated that marketing of historical performance of efficiency efforts would also be more straightforward and provide an incentive for approved insurance providers to maintain the efficiencies over time, instead of focusing on marketing efficiencies it may expect to achieve in the future. A commenter stated this also encourages farmer interest in using and supporting the automation approved insurance providers will need to implement for further savings in the costs of signup and claim settlement processes. A commenter asks if purchasing a policy under such a plan gives part ownership.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. While the alternative proposal would not require complex accounting rules, some rules will still need to be developed in order to allocate actual costs reported on a national basis to a state basis. RMA has elected to base such allocation on the percentage of net book premium for the state. For example, if the total net book premium for the approved insurance provider is $100 million and the net book premium in state A is $15 million, 15 percent of the total costs reported on a national basis would be allocated to State A. The same allocation will be used to determine the amount of premium discounts allowed in the state in order to ensure compliance with the

corresponding requirement in section 508(e)(3) of the Act. RMA agrees that marketing should be limited to the historical premium discount payments made, with appropriate disclaimers, to ensure that there is no impression provided that premium discounts are guaranteed. RMA agrees that the alternative proposal may provide a greater incentive for approved insurance providers to institutionalize the cost saving measures to achieve the cost savings each year instead of projecting costs up front and then trying to implement cost saving measures to meet the projections each year. Although it is unclear how the alternative proposal might encourage farmer interest in supporting information technology, RMA would agree that such a result would be desirable.

In response to the question on part ownership, the alternative proposal provided for in the interim rule would not include legal ownership rights in the approved insurance provider. The premium reduction plan is not creating mutual insurance companies and the approved insurance providers are paying premium discounts, not dividends. The premium discount is simply a benefit provided by the approved insurance provider in the event it can deliver the crop insurance program for less than the A&O subsidy.

Comment: Several approved insurance providers, interested parties and agents commented that to allow approved insurance providers under the alternative proposal to refer to historical reimbursements in their marketing is also problematic. Commenters asked how RMA and approved insurance providers could be assured that farmers would not be misled into the perception that a dividend or a return in premium was likely to occur if they transferred their coverage to approved insurance provider X, when in fact, it was very unlikely. Commenters stated that if an approved insurance provider has historically been unable to operate within the expense reimbursement, there should be no rational expectation the approved insurance provider will be able to operate below the expense reimbursement level into the future. A commenter states that historical reimbursement levels are not necessarily a strong indication of what a farmer will receive in the form of a discount in the upcoming year. Market conditions change from year to year, and an approved insurance provider that achieves savings in one year might not achieve them in the next year. It would also allow an approved insurance provider who achieves savings one year to market based on those savings the following year, even though it has no intention of implementing the necessary measures to achieve them in that year.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA shares the concerns of the commenters that under the interim rule, farmers might be mislead by the promise of a premium discount that might not be realized and that complaints of misconduct might increase. To address these concerns, the interim rule incorporates specific marketing prohibitions that limit advertising or promotions to actual premium discounts paid in the past reinsurance year, and requires a clear disclaimer, the wording of which contained in the interim rule or must be approved by RMA in advance, that past results do not guarantee a future payment. As stated above, states will also be involved in the enforcement of market conduct.

The commenter is correct that some approved insurance providers may elect to eligible to participate in the premium reduction plan even though it is unlikely that they will achieve the necessary savings to provide a premium discount or they do not intend to take any costs saving measures. RMA cannot prevent such conduct. However, the market itself should eliminate such behavior because farmers are not likely to remain with an approved insurance provider that claims it is eligible to offer a premium discount plan but never pays a premium discount.

Comment: Several approved insurance providers, interested parties and agents commented that the subsequent failure of the approved insurance provider to deliver upon promises made will bring about financial hardship for the approved insurance provider itself, a market disruption due to an unfair trade practice, and a black-eye for the entire crop insurance delivery system including RMA. A commenter stated that this approach reduces the likelihood of reduced services to the farmer because if that is the approach used to secure the premium reimbursement then the farmer will not select that insurer in the future. A commenter stated that capping the approved insurance provider for the following year or perhaps even the next three years as a penalty would help to discourage this practice, but it would not necessarily remedy in the meantime the harm caused to reputable competitors. A commenter also expressed concerns about whether the audits by RMA would be performed a long time after the fact.

Response: RMA agrees that making false promises of a premium discount would be detrimental to the crop insurance program so, as stated above, it has placed limitations on any advertising or promotion of the premium reduction plan. RMA also agrees that there is unlikely to be a reduction in service because RMA would be in a position to discover an infraction of FCIC service requirements before approving any premium discount and it is unlikely that approved insurance providers would jeopardize their SRAs by failing to comply with the service requirements contained in the SRA and approved procedures.

With respect to RMA audits, RMA does not anticipate conducting audits under the alternative proposal. Audits of the approved insurance providers and their cost efficiencies would be conducted and certified by independent certified public accountants with experience in the insurance accounting at the expense of the approved insurance provider. RMA would verify that these audits met the standards established under the interim rule. Clearly RMA could not evaluate the Expense Exhibits, audit and proposed premium discount until such information is provided after the annual settlement, as required in the interim rule. RMA will review the documents and approve or disapprove any premium discount as expeditiously as possible after receiving these documents.

Comment: A few agents and interested parties commented that RMA should adopt a dividend program because: farmers will benefit by increased competition because approved insurance providers and the agent force will seek out cost savings on their own in order to stay profitable and also seek to provide the best dividend track record to farmers. A commenter also stated that: (1) Farmers will benefit by added value because farmers will benefit directly by dividends proportionate to their size and also from their ability to select from a variety of benefits; (2) there will emerge a broad range of approved insurance provider-agent combinations offering various mixes of service and dividends to farmers; (3) the crop insurance delivery system will not be damaged because approved insurance providers and the agent force will not be directly penalized for providing highly skilled and personal service to the insured farmer; (4) benefits that are of no value to the insured farmers will be purged in order to maintain profitability and also

maximize potential dividends (The most capable of attaining the proper benefits mix to insured farmers will benefit from added business); and (5) competition could be further fostered because by moderately increasing the A&O levels to approximately 23–24%, new entrants into the shrinking list of approved insurance providers would be promoted (If approved insurance provider innovators are allowed into the crop insurance delivery system, eventual cost cutting spurred by dividend competition will again benefit farmers with added dividends).

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees with the commenter that the alternative proposal has significant potential advantages. The potential advantages listed by this commenter, as well as other advantages identified by other commenters, have prompted RMA to incorporate that alternative proposal into the interim rule.

Comment: Several approved insurance providers, agents and interested parties commented that the burdens placed on RMA would be reduced by a system that is based on actual cost savings because RMA would not be compelled to evaluate the credibility of projections and predictions which, as the proposed rule acknowledges, ''may not be realized.'' Commenters stated that a mechanism that is predicated on the existence of actual cost savings enables RMA to analyze concrete and ''easily verifiable'' figures to determine whether an approved insurance provider realized an expected efficiency and diminishes the likelihood of creative accounting and similar chicanery. A commenter stated that the alternative proposal is easier to administer, monitor and regulate. A commenter stated that evaluation of the efficiencies at a more detailed level such as by state, crop, plan, and coverage level would be possible, but not with the same degree of reliability.

Response: RMA agrees that the burdens placed on it to determine an approved insurance provider eligible to participate in the premium reduction plan are greatly reduced from the burdens under the proposed rule. RMA also agrees that it will be easier to analyze the actual costs and that it reduces the possibility of creative accounting, especially since RMA will be using the actual Expense Exhibits provided with the SRA to approve or disapprove any premium discount. Having such Expense Exhibits audited and certified by an independent certified accountant will also reduce the burden on RMA. RMA has determined that it is possible to evaluate such costs on a state basis and will provide simple allocation procedures to accompany the interim rule. Evaluation of the efficiencies at a crop, plan, and coverage level would require relatively more complex accounting and cost allocation rules.

Comment: Several approved insurance providers, agents and interested parties commented that a dividend plan approach would also have the advantage of eliminating the need for the financial reserve plan as described in the proposed rule.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees that basing a premium discount on the actual cost savings achieved by the approved insurance provider eliminates the need for a financial reserve plan and this requirement has been removed from the rule.

Comment: An approved insurance provider commented that RMA has also stated that the approved insurance providers would not be able to market the premium reduction plan ''based on a guaranteed amount of premium reimbursement.'' It is unclear whether the RMA is contemplating a prohibition against any marketing, even of potential savings, or only guaranteed savings. The commenter stated that if approved insurance providers are allowed to market potential savings, it could allow or even encourage such providers to make unrealistic or exaggerated projections about their anticipated savings in order to attract or keep their customers in a price competitive market. Not only will this cause competitive injury to providers attempting to compete fairly based on real cost savings and reasonable projections of such savings, but it will inevitably harm farmers who are lured by the potential of large cost savings that prove to be illusory in the end. The commenter stated that even if RMA's intent is to prohibit marketing of even potential savings, how could such a prohibition be enforced and whether the RMA has or is willing to commit the kind of resources necessary to enforce this market conduct requirement. In the absence of strict enforcement, unscrupulous approved insurance providers will inevitably boast exaggerated, illusory savings in order to attract market share.

Response: RMA is not precluding any marketing of the premium reduction plan. Approved insurance providers will be able to advertise that they are participating in the premium reduction plan and the amount of any premium discount paid by the approved insurance provider in previous reinsurance years, accompanied by the appropriate disclaimers. However, approved insurance providers and agents will be prohibited from stating that any premium discount will be provided or promising any amount of premium discount. RMA agrees that enforcement is important and it will monitor the conduct of the approved insurance providers and agents and will collaborate with states that also regulate such market conduct issues.

Comment: An approved insurance provider commented that, in response to the RMA's specific question as to provider workload, the workload to demonstrate savings up front is not materially greater than the workload to demonstrate savings after the fact. A commenter stated that dividend plans would still need to be reviewed for reasonableness, and approved insurance provider requests to make dividend payments would need to be carefully scrutinized prior to approval. RMA would also need to develop extensive procedures to evaluate the proposals and to establish standards for acceptability. Concerns regarding adverse market behavior would still exist under a dividend approach. A commenter stated that these should not be considered to be insignificant issues.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA disagrees that the workload to demonstrate savings up front is not materially greater than the workload to demonstrate savings after the fact. RMA has revised the provisions to eliminate much of the up front reporting requirements. RMA's evaluation of the request to participate in the premium reduction plan will be based on the evaluation of the marketing plan to ensure that all farmers in the states in which the premium reduction plan will be offered have equal access to the plan. Since premium discounts are based on actual savings, RMA does need to know the specifics of how the approved insurance provider intends to achieve the savings. RMA agrees that there needs to be careful scrutiny of the cost accounting by the approved insurance providers on their Expense Exhibits. However, cost allocation procedures will be included in procedures to accompany the interim rule and are simple. Further, a certification by an independent certified public accountant

will add credibility to the amounts reported. As stated more fully above, RMA has added provisions regarding market conduct and will enlist the assistance of the states to ensure proper conduct by agents and approved insurance providers.

Comment: An approved insurance provider commented that market conduct oversight may be required, especially with respect to monitoring competitor assertions of projected savings, impacts on competition, and income tax issues, which presumably would simply reduce ''insurance expense'' on farmer's income statement.

Response: RMA agrees that market conduct oversight is required and will enlist the assistance of the states to ensure proper conduct by agents and approved insurance providers. Further, since premium discounts are now based on actual savings and the type of assertions that can be made are so limited, the burden on such monitoring should be reduced.

Comment: A few interested parties and approved insurance providers recommend that if RMA chooses to implement the premium reduction plan using a dividend concept, it should prohibit insurers or insurance producers from marketing dividends by guaranteeing them in advance. RMA should also prohibit insurers from using policy renewal as a condition for receiving a dividend for a prior policy year. A commenter stated it does not object to an approved insurance provider notifying insureds (and potential insureds) that it has applied for a premium reduction plan. A commenter stated that any approved insurance provider that violates the restrictions on advertising should be barred from submitting a premium reduction plan for a period of two reinsurance years.

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees that approved insurance providers and their agents should be prohibited from marketing practices such as guaranteeing or projecting an amount of the premium discount to farmers in advance of the determination of the actual premium discount. As stated above, provisions have been added that regulate such market conduct. RMA also agrees that premium discounts should not be tied to policy renewals because they are based on the cost savings attained for the current reinsurance year in which the farmer is a policyholder, not the subsequent reinsurance year when the farmer may not. RMA has added provisions to the interim rule to prevent such conduct. RMA agrees with, and the interim rule allows, an approved insurance provider to notify existing and prospective policyholders that it is participating in the premium reduction plan. RMA agrees that sanctions should accompany violations of advertising prohibitions. One potential sanction is to disqualify an approved insurance provider or agent from participating in the premium reduction plan for a duration commensurate with the offense.

Comment: An agent suggests dividend restrictions include: (1) Requiring approved insurance providers to post March 15 business accounting and analysis for the prior crop year netting total actual A&O costs versus annual revenue, which would be approved annually by RMA for each approved insurance provider; (2) requiring each approved insurance provider to be responsible for their annual audit; (3) RMA setting an annual industry cap on percentage of dividends payable; and (4) not having the dividends contingent on a farmer continuing a policy into the next crop year (as in policy loss payments).

Response: As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees that approved insurance providers should be responsible for the annual audit, there should be a cap on the percentage of premium discounts that can be paid by any approved insurance provider, and that premium discounts must not be contingent upon renewal of the policy and has revised the rule accordingly. However, with respect to the accounting used to determine a premium discount, RMA will be using the Expense Exhibits provided with the Plan of Operations, including an estimate of outstanding costs.

Comment: A few approved insurance providers commented that although the determination of whether an approved insurance provider realized any cost savings will not occur until after the end of the reinsurance year and may take several months to occur, a deadline must be imposed on RMA for rendering such determination. Unlike the compliance process, the period afforded RMA to evaluate the premium reduction plan submissions cannot be limitless. A commenter stated that even if RMA was timely, it takes months and even years after the crop season to close controversial or disputed claims to determine year-end results. The commenter also stated that if the audit showed discrimination of some type, it seems likely that RMA would be very vulnerable to negative reactions.

Response: RMA agrees that specific deadlines be imposed on RMA for determining whether an approved insurance provider is eligible to participate in the premium reduction plan. However, a deadline cannot be imposed on the evaluation of the Expense Exhibits to determine whether to approve a premium discount. RMA must have the time to properly evaluate such Exhibits and it is impossible at this time to determine the requisite amount of time. When finalizing the rule, RMA will determine whether such a deadline is appropriate. However, RMA will expedite its review of the Expense Exhibits. Disputed claims should not require adjusting the approval of a premium discount since they involve the cost of delivery not the amount of claims, unless the resolution of such claims will increase the cost of delivery. To avoid having to adjust a premium discount, approved insurance providers could hold back some savings achieved to cover such contingent costs.

Assuming that the commenter is referring to the cost efficiency audit in the alternative proposal, it is unclear to RMA how such a purely financial audit would reveal discrimination. RMA agrees, however, that routine reviews or specific investigations of an approved insurance provider by RMA may reveal discrimination which would require action by RMA and may produce negative reactions from some quarters.

Comment: An approved insurance provider commented that although an alternative delivery mechanism would be a departure from the proposed rule, FCIC does not have to publish a proposed rule describing this mechanism. In this regard, the proposed rule provides notice that a change is possible, and the public ''reasonably should have filed their comments on the subject during the notice-and-comment period.''

Response: RMA agrees with the commenter.

Comment: An approved insurance provider commented that the alternative proposal warrants further consideration but requires an indefinite extension of the comment period and rulemaking procedure since no rules have been proposed.

Response: RMA disagrees that an indefinite extension of the comment period is warranted. RMA specifically sought comments on the alternative proposal and informed the public it was considering including the alternative in the final rule. Therefore, RMA has complied with the notice and comment

rulemaking requirements. However, RMA acknowledges that the alternative presents a significant change and it would like an opportunity to test this proposal and give the public another opportunity to comment before finalizing the rule. That is one reason RMA has elected to make this rule an interim rule.

2. State Variability

In the preamble to the proposed rule, RMA stated that the majority of approved insurance providers that had submitted premium reduction plans for 2005 had planned to offer the premium reduction plan only in certain states and had included variability in the amount of premium discount between states as prominent features. RMA further indicated that it had several major concerns regarding these proposals. Specifically, RMA identified the potential for competitive harm; difficulty in administration; and the potential for variability in service and treatment of farmers as potential problems if approved insurance providers were permitted to select states in which to offer the premium reduction plan and to vary the amount of discounts by state.

Consequently, the proposed rule required that the same premium discount be offered in all states in which the approved insurance provider did business. However, RMA also indicated that it was seeking comments on its analysis of the above stated potential problems and whether procedures could be developed that would be consistent with the principles that allowing approved insurance providers to select states and vary the premium discount between states, would not cause competitive harm, would be relatively simple to administer, and would ensure that service would not be reduced.

RMA received comments that supported the proposed rule and its requirements to offer the same premium discount to all farmers and in all states in which the approved insurance provider does business. However, comments were also provided in favor of allowing the selection of states and variability of premium discounts between states. The key reason most often cited for allowing approved insurance providers to select states was that not allowing such selection could cause some approved insurance providers to leave certain high-risk or low volume states rather than being required to provide a premium discount in such states. The reason given was that it would no longer be economically feasible for the approved insurance provider to operate in such states.

Another concern of these commenters was that there was significant variability in program delivery costs between states and that a one size premium discount would not fit all. Commenters were concerned that service in certain states could be jeopardized if the approved insurance provider was required to reduce costs in those states in order to qualify for offering a premium discount.

RMA has carefully reviewed these comments, especially within the context of other changes made to the proposed rule as a result of comments being sought. From this review, RMA has determined that the concerns identified in its original analysis can be adequately addressed and that both the selection of and variability of premium discounts between states can be incorporated into the interim rule without jeopardizing the integrity of the crop insurance program.

The most important factor contributing to this determination is, as explained more fully above, that RMA has elected to adopt the alternative proposal in the interim rule. Compared to the operation of the premium reduction plan described in the proposed rule, which required that specific premium discounts be guaranteed up front and approved insurance providers would make adjustments to their operation in an attempt to achieve the necessary cost savings, the alternative proposal requires that premium discounts be provided to farmers only after actual cost savings have been achieved and verified.

This alternative method of operating the premium reduction plan significantly reduces the administrative requirements of both the approved insurance provider and RMA and the likely impact on service and business practices of approved insurance providers. These changes, in turn, significantly reduce the potential for problems that might arise from either state selection or variation of premium discounts, as outlined below:

a. The concern that state variability might cause competitive harm in the marketplace. In the proposed rule, RMA was concerned that any procedure it devised to accommodate state selection or variability of premium discounts might inadvertently give certain approved insurance providers unfair marketing advantages in certain states. Therefore, it would be difficult to establish a ''level playing field'' for all approved insurance providers. This is mostly because, under the proposed rule, RMA would approve the premium discount that an approved insurance provider would be able to offer in a state before the start of the reinsurance year. The approved discount would be based on projected cost savings that may be unreasonable or unattainable. Even slight differences in the approved premium discount for different approved insurance providers in a state could result in significant marketing advantages or disadvantages possibly create conditions that would be harmful to market competition. Since approval was based on projections, it would be impossible for RMA to know the actual savings that could be realistically achieved and it might encourage some approved insurance providers to project more drastic cost saving measures than their operations could handle in an attempt to gain a marketing advantage.

However, this problem is eliminated under the interim rule. Because premium discounts are based on actual cost savings in a state, approved insurance providers would not be allowed to offer a guaranteed premium discount at the time of sale. Further, the interim rule severely limits the promotion or advertising of a premium discount to prevent approved insurance providers or agents from making any representations about the payment or amount of a premium discount. Under the interim rule, approved insurance providers can only state the actual amount of the premium discounts that have been paid in all previous reinsurance years. However, these statements must be accompanied by a prominent disclaimer that past results do not guarantee future payments.

This means that any marketing advantage that an approved insurance provider might gain in a state through premium discounts would occur only after a performance record of premium discounts based on actual savings has been established over several years. Furthermore, even when an approved insurance provider has an established premium discount performance record, it cannot promise or guarantee that premium discounts will continue in the future. As compared to the proposed rule, this marketing feature of the interim rule significantly diminishes the possibility that allowing approved insurance providers to select states or vary the percentage of premium discount between states will lead to competitively harmful situations.

b. The concern that state variability in premium discounts would be difficult to administer by the approved insurance provider and to be verified by RMA. The proposed rule required that approved insurance providers submit rather detailed expense projections when they

applied for approval to offer premium discounts. RMA was to have verified these projections as being reasonable before granting approval. In the past several years, approved insurance providers have submitted actual costs on the Expense Exhibits provided with their Plan of Operations that significantly exceeded the amount of A&O subsidy paid by RMA. This means that approved insurance providers would likely face some difficulty in demonstrating the reasonableness of projected savings, even if approved insurance providers were not permitted to vary the percentage of premium discounts between states.

Under the proposed rule, if RMA allowed approved insurance providers to vary the percentage of premium discount between states, the A&O costs and projected savings would have to be determined on a state basis. The task of demonstrating the reasonableness of state-level expense projections would have been even more formidable than doing so at the approved insurance provider level. RMA was highly concerned that some approved insurance providers, if permitted to vary premium discounts by state, would inflate cost efficiency projections in certain states to qualify to offer a large premium discount in that state and, thereby, gain a significant marketing advantage over those competitors that submitted more realistic projections to RMA.

RMA was also concerned because certain costs can only be verified on a whole book basis, not a state basis. This means that approved insurance providers would have had to allocate these costs between states. RMA was concerned because this could have provided a means to shift costs and artificially create savings in certain states.

However, adoption of the alternative proposal and other changes to the interim rule eliminates these problems. Under the alternative proposal, the approved insurance provider is not required to submit any expense information before the reinsurance year to be eligible for the opportunity to offer a premium discount. Only the actual costs reported at the end of the reinsurance year will be used. Therefore, the burden on RMA and the approved insurance provider is greatly reduced and there is no opportunity for approved insurance providers to overestimate projected savings in certain states.

Further, under the proposed rule, the approved insurance provider was required to file revised Expense Exhibits to the Plan of Operations that contained the cost and savings projections and at the end of the year, RMA would compare the projected savings with the actual savings achieved for the reinsurance year using the actual costs contained on the Expense Exhibits filed for the next reinsurance year. In the interim rule, RMA will only need to review the actual costs obtained from the Expense Exhibits provided with the Plan of Operations. This will also reduce the burden on RMA and the approved insurance providers.

In addition, in the preparation of these Exhibits, RMA has previously provided instructions on how to allocate costs from the statutory accounting statements, which are reported on a calendar year basis, to a reinsurance year basis. Therefore, these statutory accounting statements provide a basis to verify the reported actual costs. Further, RMA is requiring that the Expense Exhibits be audited and certified by a public accountant experienced in insurance as to the accuracy and completeness of the costs reported and compliance with the SRA. Therefore, there is a sound basis to verify that the actual costs reported are accurate and complete.

To solve the problem with the potential to shift costs between states, RMA has developed a formula that will be provided to approved insurance providers through procedures that RMA will provide to the approved insurance providers, and publish on its Web site at *http://www.rma.usda.gov*, not later than 5 days after publication of the interim rule. The formula takes the information reported on the Expense Exhibits and allows RMA and the approved insurance provider to determine the amount of efficiency, and corresponding premium discount, which can be paid in any state. The formula allocates certain costs to each state based on the premium volume for that state. While the actual costs may vary slightly, this formula approach allows flexibility within any approved insurance providers operation but it also sets a single standard that will be applicable to all approved insurance providers. This eliminates the concerns regarding the different cost accounting methods that can be used by approved insurance providers or the shifting of such costs.

This means the interim rule is much simpler for RMA and the approved insurance provider to administer and contains specific cost accounting requirements that are easily verified. Therefore, there is no longer any basis to preclude approved insurance providers from selecting states or allowing variation between the percentage of premium discount paid between states.

c. The concern that state variability would disrupt service in certain states and have unintended effects on business practices of approved insurance providers. Under the proposed rule, RMA was concerned that if variability of the premium discount was allowed then an approved insurance provider might look exclusively to agent's commissions for its cost efficiencies and make drastic cuts in order to allow it to pay higher premium discounts. The fear was that this could result in agents going out of business in certain states where the commissions were already lower than other states, or failure to comply with the service requirements of the SRA and approved procedures because the commission paid for such policy was so much less than the costs to service the policy. RMA was also concerned that state variability in premium discounts would have unintentionally favored one type of approved insurance provider over another depending on whether the provider employed its own full time agents or contracted with independent agents.

However, the alternative proposal adopted in the interim rule can accommodate state variability of premium discounts with much less risk of potential problems. For instance, the immediate competitive pressures of an approved insurance provider to reduce expenses in a certain state through agent commission reductions would not be nearly as intense under the interim rule as under the proposed rule because approved insurance providers and agents will not be allowed to promote, advertise or guarantee a specific premium discount in advance.

Further, the ability to select states also reduces the financial burden on agents and decreases the likelihood of reduced service because approved insurance providers can elect not to participate in the premium reduction plan in those states where the profit margins of agents could not withstand a cut in agent commissions. While RMA has numerous means at its disposal to enforce the service requirements of the SRA and the approved procedures, the goal is to reduce the incentives that could result in non-compliance with such requirements. RMA believes the interim rule attains this goal.

Selection of states and variability of premium discounts between states under the alternative proposal can also accommodate the business practices of the full range of approved insurance providers. Under the proposed rule, because cost savings had to be reasonable and verifiable, RMA was

concerned that approved insurance providers would focus on agent commissions because approved insurance providers provided their commission schedules by state, which would make costs savings more easily determined and verified. RMA was concerned that this would not easily permit approved insurance providers with captive agents to participate, because such agents may be salaried or receive lower commissions than contracted agents, or would discourage cost savings from other parts of the approved insurance provider's operation.

The interim rule solves this issue because all costs used in the formula, to be provided in the approved procedures and issued not later than 5 days after publication of the interim rule, are placed in one of three categories: agent compensation, loss adjustment expense, or overhead. Agent compensation and loss adjustment expense are both reported on the Expense Exhibit and overhead is determined by subtracting agent compensation and loss adjustment expense from the total costs. Since agent compensation and loss adjustment expense are reported on a state basis, no additional allocation rules are necessary. Further, because the formula to be published in the procedure provides a set means to allocate overhead between the states, approved insurance providers can reduce their costs from any aspect of their delivery of the crop insurance program. In addition, the formula to be published in the procedure can calculate savings that were previously achieved. This procedure was developed to accommodate a range of approved insurance provider business structures without favoring any particular structure.

With respect to the issue variability of premium discounts by state, the comments received and FCIC's responses are as follows:

a. Competitive Harm in the Marketplace

i. Competitive Disadvantage

Comment: Many agents, farmers, approved insurance providers and interested parties commented that the whole premise of the crop insurance program is that all farmers pay the same price, regardless of the farm size. Price competition is not a factor. Commenters stated that at a time when the USDA is trying to encourage more participation in the crop insurance program and get away from the yearly disaster programs, it is important that all good agents and approved insurance providers be able to compete for business on a level playing field. Commenters state that price competition will lead to an un-level playing field confusion, erode farmer's confidence in the product, and reduce the perceived value of the protection to a ''cheapest price'' commodity.'' Several commenters stated that the only competition should come through ''service'' to the farmer not who can pay the best commission to the agent. Farmers can then choose which agent offers the best level and quality of personal service. A commenter states that value is something other than price. It's having agents that can help in the needs analysis, and then matching up products offered at a reasonable cost to provide the proper risk management tool for the farmer.

Response: While the premise of the crop insurance program is that all farmers pay the same premium, legislative history shows that section 508(e)(3) of the Act was included for the specific purpose of fostering price competition. There is no way to implement section 508(e)(3) of the Act without creating price competition because participation in the program is voluntary and the amount of any premium discount is based on the amount of savings an individual approved insurance provider can attain. RMA has no choice but to implement section 508(e)(3) as enacted.

RMA would agree that the value perceived by some farmers is something other than, or at least something in addition to, price. Many farmers will likely consider a range of factors, including the examples of extra service offered by the commenters, in making a choice of agent and approved insurance provider. For those farmers that place more value on service, approved insurance providers or agents that do not offer premium discount plans, and those that do, can still compete by offering superior service. It is up to the farmer to determine which it values the most. This is the foundation of competition—the market determines the value of the product or service.

Comment: Several agents, approved insurance providers, and interested parties commented that the federal crop insurance program should NOT be a competitive program. The commenter states that the premium reduction plan discount gives the qualifying approved insurance provider an advantage over the approved insurance providers that do not qualify. This advantage filters down to the agents and no approved insurance provider or agent should have a price advantage.

Response: Although the commenters clearly do not wish for Federal crop insurance to be a competitive program, the reality is that section 508(e)(3) of the Act clearly mandates that crop insurance be allowed to be competitive with respect to price and that RMA is to establish the limits and procedures needed to facilitate this price competition. RMA agrees that approved insurance providers that are eligible to participate in the premium reduction plan have a competitive price advantage to those that do not. The whole premise of price competition is to be able to provide the same product or service for less money.

However, the interim rule allows any approved insurance provider, and its affiliated agents, to be able to participate in the premium reduction plan if the approved insurance provider's marketing plan is adequate. Whether a premium discount can be paid depends on whether the approved insurance provider can deliver the crop insurance program more efficiently than the A&O subsidy. Further, as some commenters have discussed, farmers also value service and even if agents and approved insurance providers do participate in the premium reduction plan, they can still compete by offering superior service, which some farmers may find to be more valuable than a potential premium discount.

Comment: An interested party commented that the premium reduction plan is expected to exacerbate competition in the low-risk states while in and of itself providing no direct incentive for approved insurance providers to consider nationwide expansion.

Response: RMA disagrees with the assumption that the premium reduction plan is expected to exacerbate competition in low-risk states while not encouraging approved insurance providers to consider expanding to high-risk states. Evidence from the operation of the premium reduction plan to date, though limited, suggests that approved insurance providers that offer the premium reduction plan are not fearful to enter high-risk states; the approved insurance provider that is currently authorized expanded significantly into Texas in 2004, a state that has one of the worst historical loss ratios. Further, it is clear that all states have some potential for profit or approved insurance providers would not be doing business in such states.

However, some commenters and expert reviews suggested that not requiring approved insurance providers to offer their premium reduction plan in all states in which they do business, as required in the proposed rule would adversely affect national approved insurance providers. RMA has

reconsidered this issue and now allows approved insurance providers to select the states in which to participate in the premium reduction plan.

Comment: Several agents and interested parties commented that the impact of the premium reduction plan combined with the proposed budget reductions to the crop delivery system will reduce margins and in the long run lead to less competition, fewer agents, and diminished service to the farmer. Competition is a great means to reduce fraud. A commenter stated that the premium reduction plan will drive premiums lower. A commenter states that the premium reduction plan issue should not be about agents or agent commissions but about maintaining a crop insurance program that is working and providing stability in our nation's rural economy and America's farmers. The farmers are to be focusing on producing good crops and managing their business and not worrying about their crop insurance and the rules and regulations of the policy.

Response: Participating in the premium reduction plan is strictly voluntary and approved insurance providers have to make the business decision whether it is in their and their policyholder's best interests to participate. Further, approved insurance providers have to be sure they can participate in the premium reduction plan and still be in compliance with all the FCIC approved policy and procedures pertaining to the delivery of the program. Approved insurance providers are not going to risk violations of their SRA because the consequences could be much greater than simply withdrawing eligibility to participate in the premium reduction plan.

The expert reviewers generally agree with the commenters that the number of agents will decline. However, they generally see the premium reduction plan as improving the overall quality of remaining agents, the financial health and stability of the industry, and at least one reviewer predicted less fraud. But based on the comments received it appears that many believe that the premium reduction plan could stimulate competition.

RMA disagrees that farmers should be concerned only with production and management decisions and not with their crop insurance policies or its rules or regulations. Farmers are legally required and presumed to know the contents and requirements of their policies and agents are required to ensure that they do. Further, risk management is one of the major management issues confronting farmers and crop insurance is a key tool in developing the overall protection for the farmer. Therefore, farmers need to also focus on crop insurance to ensure that their risks are adequately protected.

RMA also disagrees that the premium reduction plan will drive premiums lower. The total amount of premium remains unchanged regardless of whether the premium reduction plan is offered or not. All that could be reduced is the amount of premium paid by the farmer because the premium discount paid by the approved insurance provider could be viewed as an additional subsidy. However, under the alternative adopted in the interim rule, because the premium discount will not be known until after the premium is due, farmers will still pay the same amount of premium.

Comment: A few interested parties commented that the premium reduction plan ''concept'' does not fit the business model of the crop insurance program. In conventional lines of insurance, carriers independently file premium rates, establish underwriting criteria, and develop policy language subject to state insurance department oversight. In this setting, the existence of a premium discount mechanism is consistent with the approved insurance provider's ability to set its own rates, select its own mix of insurance products, and underwrite against undesirable risks. In contrast, federal crop insurance is a national program intended to provide a financial safety net for American farmers. The commenter stated that the premium reduction plan concept disregards these unique characteristics of the federal crop insurance program and proposes a questionable rationale for downward premium adjustments based on only a single component of the total gain or loss of the approved insurance provider. A commenter stated that by segregating the gains and losses on A&O subsidy component from the gains and losses on the underwriting component of the business, the premium reduction plan can encourage behavior that has an adverse impact on approved insurance providers and on the program as a whole.

Response: RMA acknowledges that price competition, as allowed for under 508(e)(3) of the Act, is not directly comparable to price competition for conventional, private insurance products. This is because RMA separates out the risk premium from the A&O subsidy. In other lines of insurance, expenses and profit are usually built into the premium.

However, RMA would disagree with the view that price competition under the premium reduction plan disregards the unique characteristics of the Federal crop insurance program. On the contrary, one could argue that these characteristics are specifically considered by the requirement that price competition be confined to a single component of an approved insurance providers total revenue and cost stream—delivery costs compared to the A&O subsidy. It is this requirement that prevents price competition from being influenced by the underwriting component of an approved insurance provider and thereby affecting the solvency of that approved insurance provider and jeopardizing the financial stability of the program. Further, since premium discounts are not approved until after the end of the reinsurance year, RMA can now evaluate the financial condition of the approved insurance provider before approving any discount. The interim rule has been revised to allow RMA to disapprove a premium discount if the payment of such discount could jeopardize the financial solvency of the approved insurance provider.

Comment: An interested party commented that the entity offering the premium reduction plan is to demonstrate that the ''discount to be extended to the farmer comes directly from demonstrated internal cost savings of that entity as directly derived from their developed premium reduction plan model.'' The commenter stated that in this regard it is the same as an insurer needing to demonstrate that a group discount is developed from the expense and cost-savings of the specific group itself, and not from the insurer offsetting group expenses across other lines to gain a competitive advantage in a select or preferred marketplace.

Response: RMA acknowledges that the requirement that premium discounts come from A&O cost savings may be based on a similar principle as that which guides approved insurance providers in determining whether a specific group discount derived from internal cost savings within that group is justified. The commenter is correct that this principle and the requirement that premium discounts correspond to the cost savings allow approved insurance providers to compete on a level playing field and precludes offsetting expenses from other lines of insurance to gain a competitive advantage. This is one of the reasons that the Expense Exhibits to the SRA are used because the costs included on such Exhibits are limited to the costs associated with the crop insurance program and not other lines of insurance. RMA can compare past Expense Exhibits to determine whether there are radical differences and

whether the claimed changes in the operations of the approved insurance provider can account for the changes or there is a likelihood of improper cost allocations.

Comment: An approved insurance provider commented that commission reductions distort the original intent of premium reduction plans as they do not represent true operating ''efficiencies.'' The commenter stated that the manner in which sales entities are rewarded is already subject to free market forces. Barriers to entry do not preclude new agents from entering the program. A market exhibiting ''excess'' agency profits will attract new agents, competition from which tends to shrink agent profit margins. The commenter stated that by creating a system where agent commissions are the most convenient and verifiable efficiency, if marginal agent revenues are artificially driven below marginal agent costs (*i.e.*, premium reduction plans based on commission reductions), customer service will suffer, competitive harm will ensue by repelling new entrants. The commenter stated that the ability and quest for ever-increasing efficiencies is already a natural motive in a market driven to maximize profits. The market already competes vigorously on a non-rate basis and profit-maximization objectives already drive efficient delivery.

Response: The commenter makes the economic argument that, in the long run, forces of supply and demand will operate to achieve an equilibrium in agent's commissions in which commissions become, by definition, fully efficient—*i.e.* incorporating no excess profits. The commenter's conclusion appears to be that, because agent commissions demonstrate this tendency, their reduction should not be considered as a possible cost efficiency.

Several economic arguments could be advanced, however, that justify considering reductions in agent commissions as an efficiency. First, the market for agents is dynamic and seldom if ever in long run equilibrium. An approved insurance provider should be able to identify instances where agent commissions (or more broadly for any other cost input) include excess profits and seek to reduce those excess profits for the purpose of achieving cost efficiencies. An approved insurance provider's ability to claim some or all of an agent's possible excess profits would be determined in a free market negotiation between the approved insurance provider and the agent.

Second, without the premium reduction plan, the delivery of Federal crop insurance includes established A&O subsidies and premium rates that are not subject to free market forces. These non-competitive revenue streams to the approved insurance provider have the potential of creating what economists call ''economic rents.'' Economic rents can persist over long periods and can sometimes not be reduced by the operation of free market forces because they are established by law or decree. Academic research has identified economic rents in Federal crop insurance that stem from these and other aspects of the Federal program and have indicated that portions of these rents have been shared between approved insurance providers and agents through the competition for agents identified by the commenter. If such economic rents exist, as research indicates, the premium reduction plan would foster price competition that would extract at least a portion of these rents for the benefit of farmers.

As to the comment regarding deteriorating service if agent commission reductions are permitted, as stated above, an approved insurance provider seeking cost efficiencies to qualify to pay a premium discount must make sure that it can maintain all requirements for service under the SRA and approved procedures. An approved insurance provider that would allow its service to decline below these requirements would jeopardize its eligibility to participate in the premium reduction plan, pay a premium discount, and operate under the SRA. RMA is confident that such a powerful deterrent, as well as vigilant monitoring by RMA and continued competition among approved insurance providers and agents, will ensure that any potential agent commission reductions will not adversely impact service to policyholders.

Comment: An agent commented that perhaps Congress and even the RMA imagined a day where there would be one or two ''premium reduction plan players'' in the market and other approved insurance providers would run their programs in the traditional manner. Unfortunately, the free market system has a way of encouraging and then eliminating competition. The commenter states that, as the RMA found out last year, current SRA holders are simply not going to set back and let someone take business away from them.

Response: RMA has never had any preconceived notions regarding how many approved insurance providers would elect to offer the premium reduction plan. RMA has always assumed that each approved insurance provider would examine its operations and the interests of its policyholders and make a sound business decision with respect to whether it would participate in the premium reduction plan. That assumption continues to be true under the interim rule. Even if the commenter is correct that many or all of the approved insurance providers feel compelled to participate in the premium reduction plan, the interim rule has provisions that attempt to minimize the negative impact of potentially destabilizing forces while allowing the price competition that is required in the Act to operate. Under the alternative proposal, RMA can determine whether a premium discount would put any approved insurance provider into financial difficulties before approving payment of any premium discount. The interim rule has been revised to allow RMA to disapprove a premium discount if the payment of such discount could jeopardize the financial condition of the approved insurance provider.

Comment: A few agents and interested parties commented that if an approved insurance provider is able to operate at a higher profit level than other approved insurance providers through its ingenuity, technology, and entrepreneurial skills why should they be forced to pass on these profits to their insureds. The commenter states that technically they may not have to offer the premium reduction plan, but if other approved insurance providers choose to offer such a plan, then in order to remain competitive that approved insurance provider will be forced to also offer the premium reduction plan. The commenter asks what incentive will there be for an approved insurance provider to improve their business if more of the profits will be given away. The commenter asked if the premium reduction plan is able to generate a cost savings why these savings should be passed on to the insured and not the American taxpayer who already foots the bill for most of the current program.

Response: RMA agrees that, if an approved insurance provider can operate within the A&O subsidy, it is not required to participate in the premium reduction plan and can elect to keep these profits. RMA also agrees that competitive forces may move such an approved insurance provider to request to participate in the premium reduction plan. The potential to gain market share and thereby achieve underwriting gains on the additional business is a possible reason why an approved insurance provider would be motivated to find cost efficiencies even if the approved insurance provider must inevitably return such savings to farmers in the form of a premium discount. Although the commenter is

correct that taxpayers are paying a significant portion of the costs of the crop insurance program, section 508(e)(3) of the Act makes it very clear that policyholders are the sole recipients of these savings.

Comment: Several interested parties and agents commented that they thought such discounts were against the law in some states, which may mean that discounted products may not be made available to all farmers. A commenter stated that the premium reduction plan does not provide savings because the funds are returned to the farmer as a rebate. A commenter states the premium reduction plan is a rebate because the savings come from one source, agent commission, approved insurance providers have no control over rate making, and the discount is conditioned upon the purchase of insurance.

Response: Whether the premium reduction plan may be a form of rebating that is prohibited under most state laws is not material. As stated above, under section 506(l) of the Act, any state law that is in conflict with the Act or any regulation promulgated by FCIC is preempted. As stated above, since section 508(e)(3) of the Act expressly allows premium discounts to be provided and does not state that such authority is subject to state law, whether the savings come from one source or multiple sources, approved insurance providers have no control over rate making, or the discount is conditioned upon the purchase of insurance does not override this express authority. Since state law is preempted, premium reduction plans can be made available in all states.

Comment: An interested party commented that the premium reduction plan concept suffers from a fundamental design flaw, whether the payment is made up-front or on a delayed basis, in that the payment is based on only a single component of the approved insurance provider's income. Approved insurance providers would be encouraged to provide premium discounts for any savings achieved on the expense component of the business even if the approved insurance provider loses money on the underwriting component of the program.

Response: RMA disagrees that the premium reduction plan is flawed because it considers only the delivery expense component of an approved insurance providers financial statements. Under section 508(e)(3) of the Act, these are the only costs that can be used to finance a premium discount. However, this does not have to be the only factor RMA considers when determining whether to approve a premium discount. As stated above, under the alternative proposal adopted in the interim rule, RMA has the ability to determine the financial condition of the approved insurance provider before any premium discount is approved and can deny such approval if there would be an adverse impact.

Comment: Several interested parties, agents, and approved insurance providers commented that premium reduction plans will result in a high degree of policyholder turnover or ''churning'' of the book of business causing more paperwork, data lost, and data reentered incorrectly. Commenters stated that data simply cannot be switched around over and over with out losing its integrity. Commenters state this turnover could overwhelm the operational and financial capacity of approved insurance providers. Commenters stated that the cost to regulate this type of turnover and the risks associated with the premium reduction plan will far outweigh the small benefits offered to farmers through the proposed premium reduction plan rule. A commenter asked whether a system cannot be developed that would permit better flow of information. A commenter asked how RMA will monitor the capacity and what safeguards are in place to assure the farmer that the needed infrastructure is available to handle fair, fast claims service and timely indemnity payment.

Response: RMA agrees that expanded participation in the premium reduction plan could result in switching of policies between agents and approved insurance providers, as policyholders gain increased consumer awareness. However, the impact may be mitigated by the fact that premium discounts are no longer guaranteed up front in the interim rule. Because farmers will no longer know whether they will receive a premium discount, or the amount, there will likely be less ''churning'' of the book of business.

Further, any approved insurance provider requesting the opportunity to offer a premium discount would need to account for any data processing costs associated with acquiring new policies as it evaluated cost efficiencies. The approved insurance provider would also need to ensure that its infrastructure was sufficient to handle claims. With respect to regulating such turnover and claims servicing, RMA would continue to hold approved insurance providers accountable under the standards established by the SRA. For data processing, for instance, those standards are contained in Appendix III of the SRA. Any approved insurance provider that is eligible to participate in the premium reduction plan must meet those standards. An approved insurance provider that becomes overwhelmed by the task of entering new policy data or whose data loses its integrity would risk losing the eligibility to participate in the premium reduction plan or to operate under the SRA. RMA is confident that its data system could handle increased policy turnover so that an additional system is not needed. RMA is also confident that its systems can adequately monitor existing service standards under the SRA.

Comment: An interested party commented that approved insurance providers provide thousands of jobs across the country and asks if the U.S. government should be in the business of jeopardizing private jobs and substituting them with government employees.

Response: RMA would agree with the commenter that approved insurance providers are responsible, either through direct hires or contracts, for the creation of thousands of U.S. jobs and that it is possible that jobs may be affected by the premium reduction plan. However, neither the Act nor RMA dictate the manner in which approved insurance providers obtain their savings under the premium reduction plan and RMA has sought to provide greater flexibility in the interim rule for approved insurance providers to attain such savings. Market forces determined by competition among the approved insurance providers will determine how and to what degree savings are obtained.

Comment: Several agents commented that with increasing expenses farmers are looking for ways to cut costs such as crop insurance and the premium reduction plan will make it worse. A commenter stated that approved insurance providers offering premium reduction plans will just be taking advantage of their previous hard work helping and educating farmers. A commenter stated that many larger farmers will move to the approved insurance provider offering the larger discount.

Response: RMA would agree that farmers are looking for ways to reduce costs, but is unsure of how the premium reduction plan will thereby worsen a farmer's condition. RMA would agree that a farmer that has been helped in the past by a dedicated and hard-working agent might decide to abandon that agent for one offering a price reduction and that larger farmers might be particularly attracted to premium discounts because of their size of operations. These outcomes are all possible under the existing program

since farmers are free to choose their agents and approved insurance providers. While it may be argued that the proposed rule exacerbated this problem, the interim rule has been revised to no longer allow approved insurance providers to guarantee the premium discount up front, limit advertising or other promotions, and require approved insurance providers to specifically market the premium reduction plan to small, limited resource, women and minority farmers in the states where it is available. Further, as some commenters have pointed out, farmers also value service and may chose superior service and knowledge of their agent over the discount offered by another agent participating in the premium reduction plan when determining the best value to the farmer.

Comment: An approved insurance provider commented that decisions on the use of independent versus salaried agents should be based on competitive market forces and service considerations, not a government regulation intended to provide a benefit to farmers. The commenter stated the program needs to allow for individual approved insurance providers to deliver the program independent of government rules on how the agents are compensated. The commenter asked if the approved insurance provider is operating through independent agents, whether the agent is also required to offer the premium reduction plan to all of his customers. If not, the agent may only offer the premium discount to the larger customers due to commission considerations.

Response: RMA agrees that an approved insurance provider's decision on the types of agents it uses should be one based on market forces. In the interim rule, RMA has attempted to be sensitive to the different delivery structures of current approved insurance providers and allow approved insurance providers maximum freedom for such decisions. With respect to the question of whether an independent agent is required to offer premium reduction plan to all of his or her customers, all policyholders of an approved insurance provider that participates in the premium discount plan will automatically receive any premium discount paid by the approved insurance provider. If the agent represents more than one approved insurance provider, the agent is required to notify all customers of other approved insurance providers it represents that participate in the premium reduction plan, but is not required to notify the customer of the status of approved insurance providers that the agent does not represent. As stated above, market forces will generally handle the situation where an agent attempts to place all large farmers with the approved insurance provider participating in the premium reduction plan and all small farmers with the one that does not. Lastly, approved insurance providers are required to independently market the premium reduction plan to all farmers including small, limited resource, women and minority farmers and no agent can refuse to insure any such farmer who requests coverage.

Comment: An approved insurance provider commented that RMA has espoused a principle and taken an action that is contrary. RMA states that ''[d]ecisions on the use of independent versus salaried agents should be based on competitive market forces * * *'' However, RMA has crafted regulation that, by FCIC's admission, is intended to protect a specific business plan (salaried or ''captive'' agents) from the vicissitudes of the market.

Response: RMA agrees that competition should be based on market forces. The principle espoused in the interim rule is that the approved insurance provider should, wherever possible, have flexibility in identifying cost efficiencies and be able to act to achieve those possibilities under competitive market forces. The reference to protecting a specific business plan may have been confusing. What was meant was that, where specific requirements must be imposed to ensure that the objectives of the Act are met, those requirements should not create a clear or obvious advantage for one type of business plan over another. RMA believes that it is not inconsistent for a regulator to encourage competitive market forces whenever possible and, at the same time, impose regulations that attempt to balance the interests of approved insurance providers with different types of business plans. RMA wanted to create a neutral framework and it believes that the framework developed would permit all approved insurance providers to have equal access regardless of the manner in which it delivers the program.

Comment: An approved insurance provider commented that choosing varying delivery mechanisms is a normal function of free market choices and does not, therefore, unfairly bias qualification rules, unless they opted to affect the manner in which they deliver or account for delivery of product. The commenter stated that the competitive advantage, or disadvantage, of using captive agents is already contemplated in a profit maximizing environment. The commenter stated that commissions are already subject to market forces and changes in commission rates are already driven by the market. Further, rate reductions built on commission reductions, as opposed to true operating efficiencies, would compel other approved insurance providers or agents to either follow or withdraw from the market, and if the latter, would potentially create under-served areas.

Response: RMA agrees that an approved insurance provider's choice of using captive or contracted agents is one to be determined in the context of a free market. Further, RMA agrees that commission rates for agents are already driven by market forces. However, in structuring the interim rule, RMA desires to avoid imposing provisions that would unnecessarily favor those approved insurance providers that had elected to operate with a captive agent structure or, alternatively those approved insurance providers with a contracted agent structure.

The commenter implies that there is a difference between a reduction in commissions and a true operating efficiency. Under the law, a reduction in either commission costs or other operating costs would be deemed an efficiency as long as the ability of the approved insurance provider to maintain service standards under the SRA was not adversely affected. Nevertheless, RMA shares the concern of the commenter that a reduction in compensation in certain geographical areas as a result of the premium reduction plan may cause agents or, ultimately, an approved insurance provider to withdraw from those areas. The provisions of the interim rule reflect measures designed to mitigate this potential, including allowing the approved insurance provider to select the states in which to participate in the premium reduction plan.

ii. Approved Insurance Providers

Comment: Many interested parties, agents, farmers, and approved insurance providers have commented that the proposed premium reduction plan rules will also force many approved insurance providers out of the industry, while new participants will not enter, thus reducing competition by driving approved insurance providers out of the market and forcing agencies into financial disaster and decreasing the competitive force that drives the private sector. A commenter stated this will increase premiums. Other commenters claim crop insurance has experienced high levels of budget cuts and regulation changes in the last several years which

have placed some approved insurance providers on the edge of financial disaster. A commenter stated that it looks like a lot of tracking and reporting needs to be done by the approved insurance providers and this added expense may be too much for smaller approved insurance providers. Commenters stated that this industry needs more providers, not less, and that competition increases service to farmers. A commenter states that farmers need options and this rule will remove several approved insurance providers as viable options and that it is not good for the system if only a few approved insurance providers remain—giving them leverage over the system. Another commenter stated that if the number of approved insurance providers is reduced, the approved insurance providers remaining will have to take on their business, thus slowing down the time a claim can be serviced.

Response: RMA does not agree with the commenters' basic assumption and resulting predictions that price competition will necessarily result in fewer approved insurance providers, less competitive approved insurance providers, and higher premiums (prices). One could point to many instances of government regulated industries where price competition has been introduced, such as the telecommunications and commercial airlines industries, where precisely the opposite has occurred.

RMA also disagrees that competition will increase premiums. As stated above, premiums are determined by the expected losses and a reasonable reserve and are independent from any efficiency related premium discount. Therefore, the amount of premium is unaffected by the premium reduction plan.

RMA further disagrees with the assumption that regulations and budget cuts have placed some approved insurance providers on the edge of financial disaster. Each reinsurance year RMA evaluates the financial conditions of the approved insurance providers. This evaluation has been strengthened considerably since the failure of American Growers Insurance Company (American Growers). The most recent evaluation shows no deterioration in the financial health of approved insurance providers. However, RMA agrees that such budget cuts can impact approved insurance providers. For this reason, the election to participate in the premium reduction plan is totally voluntary. Approved insurance providers are in the best position to determine whether they can participate in the premium reduction plan. In addition, with the adoption of the alternative proposal, premium discounts will not be approved until after the cost savings have been proven and RMA determines that the approved insurance provider is in a sound financial position to pay the premium discount. Also, an approved insurance provider can elect not to request approval to pay a premium discount if it is concerned about its financial condition.

The adoption of the alternative proposal has also significantly reduced the paperwork burden on approved insurance providers, especially up front. Determinations of premium discounts will now be based on the Expense Exhibits that are already provided for the SRA. Further, as stated above, the interim rule now contemplates a simplified procedure to determine the amounts of premium discounts.

RMA agrees that it would be desirable to have additional approved insurance providers. New ones are being approved each year, even though the premium reduction plan has been available. There is no indication that this will change under this rule. To the contrary, RMA continues to receive inquiries and applications from new approved insurance providers to enter the program. Further, nothing in the interim rule precludes competition based on service. As stated above, commenters have pointed out that some farmers will value service more than the discount and likely elect to remain with agents that do not participate in the premium reduction plan. Others will choose a mix of service and price. These are choices that American consumers make every day.

Comment: An agent commented that if RMA allows one approved insurance provider to offer a premium reduction plan, many other approved insurance providers will most likely be motivated to do the same thing. If that proves true, RMA will end up with fewer approved insurance providers involved and those with economies of size will have the advantage.

Response: RMA would agree with the comment that once one approved insurance provider is able to compete on the basis of price, other approved insurance providers will likely want to respond. However, RMA does not agree that the result of price competition is necessarily fewer, larger approved insurance providers. One could point to other instances of government regulated industries where price competition has been introduced, such as telecommunications and commercial airlines, where the precise opposite has occurred.

Regardless of differing views about the possible impact of the premium reduction plan on the industry, RMA has attempted to address possible negative industry impacts of the premium reduction plan such as allowing approved insurance providers to select those states in which it wants to participate in the premium reduction plan and reducing the reporting burdens on approved insurance providers electing to participate.

Comment: An agent commented that RMA will require that approved insurance providers not reduce its service to their insureds. The commenter asked how RMA would entice approved insurance providers to continue in this line of insurance. If the profitability is not there due to the premium reduction plan and tighter regulations, it would obviously have an impact on the overall financial strength of the industry.

Response: As stated above, service cannot be reduced below the standards required by the SRA. If an approved insurance provider does not think that it could provide this level of service at a cost below the A&O reimbursement, it does not have to participate in the premium reduction plan. It is approved insurance providers that are in the best position to determine whether they have the ability to participate in the premium reduction plan and, as stated above, approved insurance providers that do not participate can still compete because there are farmers that will value service more than the premium discount.

With respect to the question of attracting new approved insurance providers, the recent increase in the number of approved insurance providers entering the program demonstrates that there are still attractive business opportunities in the crop insurance program. Further, it is not evident that the commenter's assumption that the premium reduction plan would necessarily lead to lower profitability for approved insurance providers. Some of the expert reviewers predicted that the industry would become financially healthier under an expanded the premium reduction plan because of increased efficiencies. In addition, as stated above, the interim rule contains provisions that allow RMA to determine the financial condition of an approved insurance provider before approving a premium discount.

Comment: An interested party and agent commented that a premium reduction plan will allow new, unproven approved insurance providers to enter a marketplace where they may not belong. This could result in more approved insurance providers going broke and farmers being left with

unpaid claims for extended periods of time. This could in turn cause many farmers to go broke. A commenter stated that sometimes the purchase of ''cheap'' insurance results in the failure of the products to perform at the time of claims.

Response: To qualify to participate in the premium reduction plan, an approved insurance provider must first be able to meet all requirements under the SRA, including financial health and solvency standards. Thus, a new approved insurance provider entering the program wanting to participate in the premium reduction plan would be no more likely to fail than an existing approved insurance provider electing not to participate in the premium reduction plan. In addition, under the alternative proposal adopted, RMA can now re-evaluate the financial strength of the approved insurance provider before approving a premium discount based on the actual financial condition of the approved insurance provider.

Further, the commenter's fear about the delay of the payment of claims is unfounded. As RMA demonstrated through American Growers, it has the commitment and ability to ensure that farmer's claims are paid timely.

iii. Agents

Comment: Several agents commented that if approved insurance providers create their efficiency by slashing agent commissions, agents may be forced to shift business to other approved insurance providers for economic reasons.

Response: If an approved insurance provider cuts commission too deeply, its agents may elect to shift their business to another approved insurance provider. However, since approved insurance providers have an incentive to keep their business, this is an issue between the agent and approved insurance provider. The contract between an agent and an approved insurance provider is freely determined in a competitive market and RMA would agree that the premium reduction plan may result in a reassessment by approved insurance providers and agents of the terms of those agreements.

Comment: Many agents, farmers and other interested parties commented that the proposed rules will create super agencies and consolidate the bulk of crop insurance business with a couple of approved insurance providers who are not familiar with the farmer's operation. Commenters stated that the industry can ill afford to become smaller. The premium reduction plan will help the large agent eliminate the small agent because of the reduced commissions. Commenters state that lower commission will mean higher volume will be necessary to survive. A commenter stated the premium reduction plan would lower the participation in the program and return farmers to depending on disaster programs as in years past. Another commenter stated that the crop insurance program has succeeded over the years with the basic idea of a large number of agents and approved insurance providers selling crop insurance policies and the premium reduction plan will end this. The result would be fewer choices of approved insurance providers for insureds. A commenter stated that the larger the agent, the lower the service. A commenter stated that the premium reduction plan favors large agencies and approved insurance providers who will not provide the personal service of existing community agents.

Response: Most of the expert reviewers commissioned by RMA predicted that, if participation in the premium reduction plan is increased, the agent workforce would consolidate with higher average numbers of policies per agent and less personal contact between agent and policyholder, views that are consistent with the commenters. However, this is unlikely to happen to a degree that it harms the program because, as stated above, if service is reduced to the point that it no longer complies with the requirements of the SRA, approved insurance providers would risk their ability to participate in the crop insurance program.

The commenters assume that availability of the premium reduction plan will automatically result in farmers leaving their agents to go with those that participate in the premium reduction plan. However, the competition between the large and small agents currently exists as a result of economies of scale and levels of service. Further, commenters state that small agents stay in business because of the superior service they provide. As other commenters have pointed out, some farmers will still value the service from their existing agent more than the premium discount that may be available through another agent. This superior service should still permit small agents to compete. In addition, because the premium discount is no longer guaranteed, the switching of agents will likely be mitigated because some farmers will likely choose to remain with an agent that knows their operation and risk management needs rather than move to a new agent that is not familiar with the operation on the chance there may be a premium discount at some point in the future.

It is possible that reduced commissions will require an increase in the amount of business for the agent to remain financially viable. However, as stated above, there will be a balance between any reduction in commission and the point at which the agent elects to take its business to another approved insurance provider. Both the agent and the approved insurance provider have an incentive to retain the book so this will be another opportunity for market forces to control. Further, approved insurance providers are not going to risk reducing commissions to the point that agents can no longer comply with the service requirements in the SRA.

The commenters fail to explain why the premium discount will result in lower participation in the program and reliance on ad hoc disaster programs. Most of the experts agree that there is likely to be a modest increase in participation and increased buy up at higher coverage levels, not a decrease. Further, the ability of a farmer to receive an additional benefit is not likely to result in the farmer abandoning the program providing the benefit. Even if agents do consolidate, farmers must still receive the level of service required by the SRA.

Comment: Many agents, farmers, approved insurance providers and other interested parties commented that widespread cuts in agent commissions under these plans would likely force many independent agents to stop delivering crop insurance. Commenters state that commissions will not be enough to cover the time and expense to properly deliver federal crop insurance, which involves more E&O exposure. Commenters stated that the agent's time can be spent more effectively in other areas of insurance with a lot less responsibility. Some commenters state agents will not be able to continue their excellent service to the customer and more farmers will fall through the cracks or result in poor risk management decisions being made by the farmer. A commenter wonders whether there will be enough agents left to service the business. Commenters state that farmers will suffer the biggest loss in experience and quality. A commenter stated that the statement that agents receive 70% of the A&O subsidy in the program is flawed. A commenter stated the unemployment rate will go up and asks what has been accomplished. A commenter stated that without agents, it would be a nightmare for approved insurance providers to obtain the necessary information from farmers.

Response: It would not be in an approved insurance provider's interest to seek large commission reductions from agents if such an action would deplete its agent force to a level where it could not properly service policyholders under the SRA because that would mean that the approved insurance providers eligibility to participate in the premium reduction plan and operate under the SRA could be withdrawn. Thus, it would be in an approved insurance provider's interest to implement only those cost efficiencies that would avoid the situation where agents could no longer stay in business or elect to shift their efforts to other lines of business that are more attractive. Further, it is not in the best interest of approved insurance providers for their agents to have more E&O exposure or farmers to make poor risk management choices because of poor service from the inexperienced and poor quality agents that remain. Both situations would negatively impact the ability of the approved insurance provider to reduce costs and the profitability of the approved insurance provider.

While the commenter may question the statement that agents receive 70 percent of A&O subsidy, approved insurance providers prepare detailed Expense Exhibits each year in their Plan of Operations to qualify to participate in the delivery of crop insurance for the next reinsurance year. Although the figures vary by approved insurance provider, total compensation to agents approximates 70 percent of total expenses.

RMA would agree that agents play a vital role in the delivery of Federal crop insurance to farmers and that it cannot operate without them. However, market forces discussed above, and revisions to the proposed rule to require premium discounts be based on actual cost savings and allowing approved insurance providers to select states in which to participate in the premium reduction plan should mitigate the commenter's claimed adverse impacts.

Comment: Many agents, farmers, approved insurance providers and other interested parties commented that they disagree with the reviewers' observations about agent compensation, profit levels, and displacement of agents by a reduction in compensation because they are made without any viable proven facts and should be disregarded. A commenter stated that when the numbers of agents decrease, the amount of business for approved insurance providers will also decrease.

Response: RMA cannot address issues that the commenters might have with the opinions of the expert reviewers commissioned by RMA to examine the premium reduction plan and RMA procedures because the commenters have not provided specific information that would refute any of the observations, conclusions, or analyses of the reviewers. The expert reviews were helpful in the development of a proposed rule and RMA has taken into consideration the comments regarding such expert reviews in drafting its interim rule. However, even if such expert reviews are disregarded, it does not change RMA's obligation to operate the premium reduction plan in accordance with section 508(e)(3) of the Act. As stated above, RMA has attempted to draft a rule that will mitigate the concerns of the commenters regarding the potential adverse impact on agents and allow all agents to continue to participate in the crop insurance program.

Comment: Many agents and interested parties commented that removal of large farmers from its book of business would force agents out of the crop insurance business. Commenters state that already a large portion of the policies they service generate the commission do not cover expenses. A commenter stated that to retain its largest accounts, the agency would be forced to offer them a discount, one which it could not afford to pass on to its smaller farmers who are already serviced at a loss. A commenter states it may have to drop them as customers all together, a thought which it cannot even consider from a legal and ethical perspective.

Response: RMA recognizes that, because servicing a policy by an agent entails a relatively large fixed cost, certain small policies must currently be serviced at a loss to the agent and the approved insurance provider. RMA also agrees that the larger policies tend to subsidize these small policies. This condition is not the result of the premium reduction plan. However, the commenters indicate that the condition that small policies are serviced at a loss might worsen if participating under the premium reduction plan were increased, presumably because the agent's commission would be reduced under the premium reduction plan. While this is certainly possible, as stated above, it is unlikely that any approved insurance provider would cut commissions to the extent that agents could not cover their costs for the book of business. Even with the premium reduction plan, approved insurance providers still have an incentive to retain their agents and ensure that policyholders are receiving the level of service required by the SRA. In addition, if the agent's client base increased as a result of attracting clients seeking premium discounts, the agent might actually gain in dollar terms.

However, the commenters are incorrect that they will only be able to offer premium discounts to their large farmers. Further, agents cannot drop existing policyholders or not offer insurance to new applicants without violating the SRA and subjecting the approved insurance provider to sanctions. If the approved insurance provider and agent participate in the premium reduction plan in a state, and the approved insurance provider is approved to pay a premium discount, all policyholders insured with the approved insurance provider in the state must receive the premium discount. One assumes that these factors will probably be taken into consideration when the approved insurance provider determines where to cut expenses, including any reductions in compensation.

Comment: Several agents and interested parties claim that with fewer agents the service the farmers deserve would be dramatically reduced and it would have a negative impact on the economy of rural communities, including loss of employers, taxes, donations, etc.

Response: As stated more fully above, approved insurance providers are required to comply with all requirements of the SRA regarding the servicing of policies. Failure to comply with these requirements could lead to sanctions under the SRA. Therefore, even in the number of agents does become reduced, which as stated above is not as likely under the revisions made to the proposed rule, approved insurance providers are still required to ensure that policyholders receive the required service. With respect to a negative impact on rural economies, RMA is not sure why this would occur since farmers would be receiving an economic benefit and, as discussed above, revisions have been made to the rule to mitigate the adverse impacts on agents.

Comment: Many agents and interested parties commented that reductions in agent commissions should come from other efficiencies associated with the premium reduction plan delivery, NOT from approved insurance providers applying to participate in the premium reduction plan.

Response: The proposed rule has been revised to allow greater flexibility in attaining cost savings. Further, the rule specifically states that not all savings can come from a reduction in agent commissions. If and how much agent

commissions are reduced is a matter between the approved insurance provider and agent. However, as discussed above, approved insurance providers have the incentive to retain agents, which means ensuring that they make sufficient income to cover the expenses in servicing their book of business. RMA has determined that approved insurance providers should be allowed to consider a full range of potential cost efficiencies to participate in the premium reduction plan, as long as the implementation of those cost efficiencies does not cause service to fall below SRA standards.

Comment: Several agents commented that the premium reduction plan would affect the agent's ability to even continue living in small towns and would at the very least force the agent to find a job in the bigger towns and take the agent away from being an active member of the community. With a smaller income would come less ability to give to the local charities/churches/schools and less expendable income for the local businesses, hurting many other businesses along down the line.

Response: Nothing in the interim rule limits agents' free market decisions as to where to establish or maintain their businesses. RMA acknowledges that the commenters are likely assuming that the premium reduction plan will lead to a reduction in agents' commissions and will force some agents to abandon small rural communities. The expert reviews commissioned by RMA indicate that some commission reductions and consolidation may happen. However, none of the reviews identified commission reductions or consolidation as producing a significant negative impact on rural economies. Nevertheless, the interim rule includes provisions, such as the four percent limit on premium discounts and the requirement that not all efficiencies can be achieved through reductions in compensation, which would ensure that the crop insurance delivery system, including approved insurance providers and their affiliated agents, is not destabilized if the premium reduction plan were to expand dramatically. Further, as discussed above, market forces will generally dictate any reduction in agent commissions because approved insurance providers have the incentive to retain their agents and too large a reduction in agent compensation would likely result in agents leaving crop insurance, which could prevent the approved insurance provider from adequately serving farmers, or agents moving to other approved insurance providers and taking their books of business with them. Approved insurance providers would want to avoid either outcome because it could result in the reduced potential for underwriting gains or potential sanctions under the SRA.

Comment: Many agents and interested parties commented that the premium reduction plan is funded 100% on the backs of agent's commission, the very group that is the most critical to crop insurance being delivered. Commenters stated that the agent's income would be severely reduced even when expenses are increasing. Commenters state that the premium reduction plan approved insurance provider contributes nothing to the farmer or to any of the discounted premium and they are not in the communities dealing with the farmers on a day-to-day basis as current agents do. They state they cannot take another reduction in income because the discount will be passed on to the agent, who still has bills to pay and families to support. Commenters state that the premium reduction plan will make crop insurance unprofitable.

Response: Nothing in section 508(e)(3) of the Act or the interim rule specifies where approved insurance providers can look to find cost efficiencies, including agents' commissions. RMA would agree generally with the commenters that agents play a vital role in the delivery of Federal crop insurance to farmers and that the program cannot operate without competent and professional agents to service the risk management needs of the farmer. Market forces and limitations in the interim rule ensure that it would not be in an approved insurance provider's interest to seek large commission reductions from agents if such an action would deplete its agent force to a level that would endanger, or otherwise lose its capacity to properly service policyholders under the SRA. However, as stated above, the interim rule also contains provisions that should mitigate adverse impacts on agents. Now approved insurance providers can select the states in which it wants to participate in the premium reduction plan.

With respect to the comment that the premium reduction plan will make crop insurance unprofitable, RMA disagrees. The choice of an approved insurance provider to qualify for and offer a premium discount is strictly voluntary. An approved insurance provider will not choose to offer premium discounts if it is unprofitable to do so. Moreover, the most profitable aspect of the crop insurance business, underwriting gains, is not directly impacted by the premium reduction plan. In addition, approved insurance providers can now select the states in which they will pay premium discounts and the amounts. Further, RMA will have the opportunity to determine the financial condition of the approved insurance provider before any premium discount is approved. Many of the expert reviewers commissioned by RMA to study the premium reduction plan issues concluded that the crop insurance industry would become financially healthier with price competition.

Comment: A few agents and interested parties commented that the premium reduction plan will severely affect insurance agents that concentrate and specialize in crop insurance only.

Response: Only one of the expert reviewers commissioned by RMA to study the premium reduction plan addressed the issue of the impact on agents that specialized. That reviewer concluded that the premium reduction plan would impact such agents positively, with more of the existing book of business shifting to them from part time agents. Moreover, the reviewer predicted that this trend would lead to less fraud and better service to farmers because the agent workforce would become increasingly more knowledgeable and professional through specialization.

Notwithstanding the expert reviewer's opinion, the changes to the premium reduction plan previously discussed should mitigate any adverse effect on all agents, including those that specialize in crop insurance. Further, as discussed above, approved insurance providers have an incentive to avoid imposing hardships on their agents because approved insurance providers may be left without agents to service the business in areas, lose business to other approved insurance providers as agents move their book of business, or face the possibility of reductions in services to farmers, which can result in sanctions under the interim rule and SRA.

Comment: Many agents and interested parties commented that RMA's core assumption that ''efficiencies'' automatically result from lowering agent compensation is only true if agents are making excessive profits. The commenters state this assumption is based on no empirical evidence or expert testimony. A commenter stated that people only spend extra time working and servicing programs when rewarded monetarily and that agents must receive fair compensation for their services. The commenter stated that crop insurance is in rural areas of America, and to meet the rising costs of travel, communication, and education in rural areas agents and approved

insurance providers need to be reimbursed fairly.

Response: Nowhere in the proposed rule did RMA assume cost efficiencies claimed by an approved insurance provider must automatically result from lower commissions. Further, nowhere in the proposed rule did RMA make the claim or imply that agents are receiving excess profits. Approved insurance providers are free to assess their business structure to determine where it can achieve savings. Further, the contract between an approved insurance provider and an agent is determined in a competitive market, which will not change under the premium reduction plan. As stated above, approved insurance providers have the incentive to retain agents and, therefore, would have to be judicious in their evaluation of whether to cut agents commissions and the amount of such cuts to avoid losing business, suffer a reduction in service below SRA required levels, etc.

RMA agrees that agents deserve fair compensation. However, whether under the existing crop insurance program or the premium reduction plan, it is the market that determines what is fair. Nothing in the interim rule would change this.

Comment: An agent commented that there should be clear documentation and rationalization how agent costs will be reduced before any premium reduction plan depending on a reduction in agent compensation be considered.

Response: The interim rule requires that an approved insurance provider certify that any cost efficiencies considered for a premium discount, including reductions in agent commissions, will not result in a reduction in service below the requirements in the SRA and approved procedures. Further, now that premium discounts are paid after all costs saving measures have been implemented and the impact of such measures are known, RMA may determine whether there has been any violation of the interim rule, SRA or approved procedures and take the appropriate action before any premium discount is approved or paid.

Comment: Many agents and interested parties commented that crop insurance is the largest E & O exposure they have. A commenter stated that there will be a lot more E & O claims and that already is an issue with E & O companies that either do not want to write crop insurance agents or have placed high deductibles on their policies for crop insurance claims. The commenter asked if the government is going to get into the E & O business.

Response: The commenters' assume that E&O exposure will increase but the commenters do not explain why they believe that it will. The commenters apparently assume that reductions in commissions would result in reductions in service, leaving agents more exposed to E&O claims. Under the interim rule, as stated above, approved insurance providers wanting to offer the premium discount will be required to maintain the same service standards as required by the SRA. This is the same standard under which E&O would be based for the premium reduction plan. Approved insurance providers would not have an incentive to implement cost efficiencies if the cost savings resulting from such actions were to result in increased litigative exposure, thereby increasing costs. Further, as stated above, approved insurance providers would not have an incentive to cut commissions so low that agents, who are needed to service their business, would have no choice but to reduce service, move their book of business, or leave the crop insurance business.

Comment: Many agents and interested parties commented that multi-peril insurance is also the most labor intensive and time-consuming line of business that insurance agents write and with the lowering of commissions it would make it more difficult to continue writing this line of business at a profitable level. A commenter states that agents do considerable work to make sure the farmer is adequately covered. A commenter states that their expense ratio with crop insurance is higher. A commenter stated that the approved insurance providers have already transferred a majority of the paperwork and administration onto the agents to reduce their expenses so the premium reduction plan will compound the problem. A commenter also stated that with the premium reduction plan lingering in the background, it cannot make long-term business plans because of the uncertainty of projected income. A commenter stated that crop insurance is very complicated and it takes an enormous amount of education to be able to deliver the products to farmers that best meets their needs.

Response: RMA agrees that the delivery of crop insurance is labor intensive and requires substantial paperwork, that agents play a vital role in the delivery of Federal crop insurance to farmers, that substantial education is required to ensure that a farmer's risk management needs are met, that the program cannot operate without competent and professional agents that can service policyholders, and that the ratio of expenses to premiums may be higher with crop insurance than other lines of insurance.

With respect to the comment that the premium reduction plan would ''compound the problem,'' the context of the comment would suggest that the commenter assumes that a premium discount would add to the paperwork or administrative costs incurred by the agent. RMA disagrees with this assumption. Although an agent would need to be aware of new market conduct rules added to the interim rule regarding how a premium discount could be represented verbally and through marketing materials, nothing in the interim rule would require additional paperwork by an agent that represents an approved insurance provider authorized to offer a premium discount. Further, these new market conduct rules were necessary to ensure that farmers are not mislead into thinking that they will receive premium discount or the amount of any such discount. Under the alternative proposal adopted, approved insurance providers and agents will not know at the time of sales whether a premium discount will be approved.

To the extent that commenters are assuming that agent commissions will be reduced to the point that selling crop insurance is no longer profitable, as stated above, it would not be in the best interests of approved insurance providers to make such reductions. As stated above, approved insurance providers have the incentive to retain agents and their books of business to maximize their potential for gains and ensure that their policyholders are served in accordance with RMA's requirements.

With respect to uncertainty created in the marketplace from a potential expansion of the premium reduction plan, RMA would agree that price competition would add another factor an agent or approved insurance provider would need to consider in business planning. The whole premise of price competition is to be able to provide the same product or service for less money.

However, most businesses in the U.S. economy must consider price uncertainty in the normal course of business planning. Further, as other commenters have suggested, price is not the only benefit that stirs competition. Commenters state, and RMA agrees that there will be some farmers who value the service provided by their agents more than the premium discount they may be receive at a future date. This is what occurs with personal lines insurance that currently allows rate competition and there is no reason to believe it would any different with crop insurance.

Comment: Many agents and interested parties commented that agents receive fair compensation for their services and earn the commissions they receive. Commenters stated that they do not understand how RMA could believe that agents make too much commission. Commenters stated they would not be interested in servicing crop insurance for less than the current commission. A commenter stated it was not fair to expect agents to reduce profits when the profit margin is so small.

Response: RMA did not take a position in the proposed rule with respect to the fairness or possible excessiveness of the current level of agents' commissions. RMA assumes that it is solely between the approved insurance provider and agent to determine what is fair compensation and that this would continue under the premium reduction plan. Further, in those states where commissions cannot be cut without jeopardizing the agent force, under the interim rule, approved insurance providers now can elect not to offer premium discounts in such states. As stated above, the amount of commission is between the agent and approved insurance provider and approved insurance providers have an incentive to retain their agents and ensure that service to policyholders meet the standards required by the SRA and approved procedures.

Comment: Many agents and interested parties commented that FCIC inaccurately estimates the percentage of administrative expenses attributable to agent compensation. The commenter stated that there is no empirical evidence in the rulemaking record to show that agent compensation is excessive and, worse, there is no evidence to show what the effect of a cut in compensation would be on the agent workforce or level of service. Without such empirical record evidence, FCIC and RMA cannot rationally conclude that a reduction in compensation would yield ''efficiency'' within the meaning of the Act.

Response: With respect to the comment that FCIC inaccurately estimates the percentage of administrative expenses attributable to agent compensation, the commenter does not explain why the estimate is inaccurate. Approved insurance providers prepare detailed expense reports each year in their Plans of Operation to qualify for participation under the SRA for the next reinsurance year. Although the figures vary by approved insurance provider and year, total compensation to agents for the industry, based on information reported by approved insurance providers, approximates 70 percent of total delivery expenses.

The comment suggesting that RMA has not conducted a study to show the effects of a reduction of agents' commissions on service assumes that the purpose of the rule is to attain efficiencies through the reduction in commissions. According to section 508(e)(3) of the Act, an efficiency occurs when the approved insurance provider's delivery costs are less than the A&O subsidy it receives. The approved insurance provider can attain this efficiency in any manner that best suits its business structure. A study is not necessary because, as stated above, approved insurance providers will not reduce commissions to the point that they can no longer provide the required level of service. Further, as stated above, approved insurance providers have the incentive to retain agents. Therefore, it would be unlikely they would cut commissions to the point that agents would move their books of business to other approved insurance providers. As has always occurred in the program, the market determines fair compensation. Finally, since the premium discount will be paid at the end of the process and is not guaranteed, approved insurance providers will be able to ensure that discounts actually paid will not be so large as to jeopardize the providers' financial position or its relationship with its agents.

Comment: Many agents and interested parties commented that the premium reduction plan will hurt the small town agencies that will not be able to handle the reduction and they will be forced out of servicing crop insurance. Commenters stated that this will leave areas without service and will pave the way for more errors, and, consequently more fraud, waste and abuse. Commenters state that these are the agents who are serving the small family farms. Commenters also claim it will be impossible to maintain the level of service the insureds currently experience. Commenters state this will harm rural communities.

Response: The interim rule does not limit agents' free market decisions as to where to establish or maintain their businesses. The expert reviews commissioned by RMA indicate that commission reductions and consolidation are likely. However, none of the reviews identified commission reductions or consolidation as producing a significant negative impact on rural economies. And, contrary to the predictions of the commenters, one reviewer suggested that such consolidation would result in agents that would provide better service.

With respect to the comment that, under the premium reduction plan, it will be impossible to maintain the level of service that policyholders expect, the interim rule requires that any approved insurance provider maintain the level of service required by the SRA and approved procedures. RMA admits that these required standards may be below the level of service provided by some agents. However, RMA cannot require that a higher level of service be maintained than is currently required by the SRA and approved procedures. It can only enforce requirements of the SRA and approved procedures. Further, as commenters have stated, this higher level of service that may be provided by some agents is a source of competition and that some farmers value this high level of service over any premium discount they may receive at some future date.

Lastly, neither RMA nor the approved insurance providers wants to harm the economy of any rural community. Such a consequence would defeat the purpose of crop insurance, which is to stabilize the economies of rural communities. As a result, RMA has added provisions to the interim rule that allow approved insurance providers to select the states in which they will participate in the premium reduction plan. Further, approved insurance providers have an incentive to ensure that their actions do not adversely impact rural communities because such action would only result in fewer customers, which would adversely affect their business.

Comment: Several agents commented that the premium reduction plan could result in crop insurance being delivered by FSA and asked if that was the purpose of the premium reduction plan. A commenter stated that RMA tried to use FSA to deliver the program before and they couldn't do it.

Response: The commenters assume that there will be insufficient agents left to deliver the crop insurance program so that RMA will have to deliver the program through FSA. However, as stated above, RMA does not believe that agents will be impacted to the extent that they will exodus the crop insurance program. This conclusion was supported by one of the expert reviewers that studied the impact on premium discounts on agents. As stated above, it would not be in the best interest of approved insurance providers to cut commissions so much that this would occur. The more likely outcome is that agents and approved insurance providers will negotiate a commission that is fair to both parties and if any savings are achieved, they can be used to pay a premium discount. However, it

is the market that will determine what reductions, if any, will be made.

Comment: An agent asked what RMA will do to protect the smaller agents.

Response: RMA is concerned with any possible negative effects that the premium reduction plan might have on the crop insurance delivery system. Certain provisions of the interim rule, such as the four percent premium discount maximum and the requirement that not all efficiencies can come from reduced compensation, seek to ensure that any changes resulting from expanded price competition are not so excessive that the industry or RMA cannot adjust quickly enough. With respect to protection for smaller agents, the fact that an approved insurance provider must still meet the standard of service required by the SRA and approved procedures for all farmers or risk sanctions under the SRA would tend to protect all agents, including smaller ones. For instance, if a smaller agent is providing the required service to his or her policyholders at an efficient cost, then an approved insurance provider could not reduce that agent's commissions without the risk of losing that agent, along with that agent's policyholders, to another approved insurance provider.

Comment: An agent commented that the savings to the insured do not appear to be that significant but the loss to the agent adds up to several dollars.

Response: If the commenter is correct and that the policyholder does not perceive much benefit from the premium discount relative to the impact of a commission reduction to the agent, then a free, competitive market would suggest that the policyholder would not be attracted to a premium discount and the policyholder's agent could affiliate with an approved insurance provider that does not offer premium discounts without the risk of losing customers. Nothing in the interim rule would prevent such free market choices by agents or policyholders.

Comment: An agent commented that the commissions for other types of property and casualty insurance are very similar to the commission levels for crop insurance.

Response: RMA has no direct information to be able to respond to this commenter's assessment. Moreover, if such rates are consistent with a long-term equilibrium, then approved insurance providers would not be able to reduce commissions to achieve efficiencies. Commission reductions can only be attained if both the agent and the approved insurance provider agree to such reductions and, as stated above, the agent always has the recourse of moving its book of business to another approved insurance provider if there is no agreement on a fair commission.

Comment: An agent commented that if farmers thought agents were making too much money and wanted to reduce their salaries and spread the wealth, it would require them and RMA employees to take on other work to make up for the lost income. The commenter also suggested it was unlikely the savings would be passed to the farmer and more likely the savings would remain with the approved insurance provider.

Response: Neither in the proposed rule nor in this interim rule has RMA suggested that agent commissions are too high. It is not RMA's position that agent commissions are too high or too low. RMA is not responsible for the regulation of agent commissions. The approved insurance provider and agent are the only parties that can determine what is a fair commission. With respect to whether savings would be passed to the farmer, the interim rule does not require that any savings attained by the approved insurance provider be passed on to the farmer. The market forces will determine whether premium discounts are paid. However, approved insurance providers have an incentive to pay premium discounts because their advertising is limited to past amounts that were paid and the year they were paid. Many farmers are not likely to change approved insurance providers or agents to sign on with an approved insurance provider that does not pay premium discounts.

Comment: Several agents commented that they have already been adversely affected by the premium reduction plan because they've lost customers and that it would have an impact on their state.

Response: RMA acknowledges that under the current premium reduction plan, where the premium discount was guaranteed up front in a fixed amount, there was a strong incentive for policyholders to shift approved insurance providers and agents. This behavior may continue under the interim rule but changes to the premium reduction plan will allow for a longer term transition and make it less likely. First, the premium discount can no longer be guaranteed or an amount promised at the time of sale. Second, farmers that are satisfied with the service they receive from their current agent are less likely to switch to other agents, even if there is a chance that a premium discount may be paid at some point in the future.

Comment: An interested party commented that there are many small and mid-sized agents selling and servicing crop insurance who are very efficient, as well as the larger agents. The commenter states that to make the assumption that these agents will become more efficient simply by reducing agent compensation is simply not correct.

Response: The commenter incorrectly assumes that the purpose of the premium reduction plan is to reduce agent commissions and this is not correct. The purpose of the premium reduction plan is to implement the intent of Congress to permit approved insurance providers to compete on price by evaluating their own business operations to determine whether they can deliver the program more efficiently. It must be remembered that participation in the premium reduction plan is entirely voluntary and it is the approved insurance providers that determine where they can cut costs and they cannot cut agent commissions without the consent of the agents. If agents are already efficient and there is no room for negotiation of lower commissions, it is presumed that the approved insurance provider will look to other avenues to attain savings.

Further, under the interim rule, approved insurance providers no longer have to report how and from where savings are to be attained. Since premium discounts are paid on actual savings, not projected, RMA will simply be reviewing the actual costs reported to determine whether there has been savings and the amount of premium discount that can be paid in each state in accordance with a formula, which will be provided in procedures, that looks at the approved insurance provider's entire crop insurance operation.

Comment: Several agents and interested parties commented that for a large percentage of policies, the expenses exceed the amount of commission earned and for many others the agent barely breaks even. A commenter states the part of the book that is earning a profit must subsidize the rest of the policies. A commenter stated that it actually loses money providing insurance for some small farmers.

Response: RMA acknowledges that, because servicing a policy by an agent entails a relatively large fixed cost, certain small policies currently may have to be serviced at a loss to the agent and the approved insurance provider and that larger accounts tend to subsidize these small accounts. This is a condition that exists notwithstanding whether there is a premium reduction plan in existence. Further, when RMA determines whether there is an

efficiency, it is looking at the book of business and the determination of the amount of premium discount is done on a state basis. Approved insurance providers determine how any savings are attained and, if reductions in agent commissions may be a tool, it can decide what commissions are cut. There is nothing in the interim rule that would preclude an approved insurance provider from only cutting the commissions of policies with premiums that exceed a certain threshold and leaving the medium and small policies untouched. As RMA has stated above, the determination of what constitutes a fair commission is a matter between the agent and the approved insurance provider.

Commenter: Several agents and interested parties commented that each year it has to battle retaining the bigger accounts because of outfits like the local Farm Credit Service, which have enticed some insured's away by offering operating loans at ½% less interest if they also carry the client's crop insurance coverage. A commenter states that banks and lending institutions should not be able to force farmers to insure with them as a condition of getting loans.

Response: The commenter is referring to an issue that is not directly related to the proposed rule. However, the conduct complained of may constitute an impermissible rebate. Only cooperatives and trade associations that sell crop insurance approved by RMA may take all or a portion of the A&O subsidy they receive and pay a portion of their policyholders' administrative fees or premium. However, there is no authority for any bank or lending institution to offer a reduced loan rate conditioned upon the purchase of insurance. If the commenter has specific information, it should report it to RMA.

Comment: Several interested parties and agents commented that reduced agent compensation could increase instances of novice agents, such as agribusiness firms that sell seeds and equipment, easily entering the business of crop insurance in some states. The commenter stated that these firms have sources of profit other than agent commissions and could thereby help approved insurance providers offer crop insurance for lower premiums by servicing policies for less compensation than the current agent workforce. However, these firms lack the experience and skill of agents in the current delivery system and have incentives to bundle lower premiums with other goods and services. Commenter states that this could result in practices such as illegal rebating and tying arrangements. A commenter suggests that these entities could harm existing agents and that RMA should require that businesses derive at least 80–90% of their income from insurance to market crop insurance.

Response: As stated above, all approved insurance providers and agents must comply with the same requirements of the SRA and approved procedures regarding service. Further, approved insurance providers and agents must comply with state licensing requirements for agents. If all of these requirements are met, RMA cannot preclude any agent from participating in the program, regardless of what other business it may be affiliated with. Further, farmers will determine if they are happy with the level of service they receive. As commenters have stated, farmers may be more interested in the level of service they receive than the possibility of receiving a premium discount. Therefore, no change is made as a result of this comment.

With respect to the potential for conditioning the sale of crop insurance on whether a farmer purchases other products, such practice is prohibited under the SRA and if RMA determines that such practices are taking place, there are sanctions available under the SRA and, if such actions occur under the premium reduction plan, RMA has added sanctions to the interim rule that would allow it to withdraw eligibility for the opportunity to offer a premium discount, withdraw approval of all or a portion of the payment of a premium discount, effectively disqualify an approved insurance provider or agent from participating in the premium reduction plan, or taking remedial measures to correct the problem. The threat of an agent's farmers not receiving a premium discount even though farmers with other agents of the approved insurance provider receive the premium discount or of ineligibility to participate in the premium reduction plan should pose a substantial deterrent to, or sanction for, any such prohibited activity. If these remedies are insufficient, RMA can take action under the SRA. If anyone knows of such conduct, they should be reporting it to RMA.

With respect to the suggestion of requiring that some minimum percentage of an agent's revenues come from insurance to qualify as a crop insurance agent, such a qualification would likely be extremely burdensome on agents, approved insurance providers, and RMA and would not necessarily ensure that an agent that met such a requirement would be better qualified to serve crop insurance policyholders as one who failed to meet such requirement. Further, many agents today derive only a portion of their income from selling crop insurance. Therefore, RMA does not think such a requirement would be in the best interests of farmers or the delivery system.

Comment: Several agents and interested parties commented that as income is drastically reduced, staff would have to be let go even though the workload is the same or has greatly increased. A commenter stated that, due to drought, changes in the program, and added paperwork, it takes a great deal more time to service the needs of farmers. A commenter states this additional work would cut into the time spent with farmers. A commenter stated it may have to find other sources of income. Commenters state that farmers will suffer.

Response: RMA does not agree with the commenters' initial assumption that the premium reduction plan will be the catalyst for such a chain of events. As stated above, commissions will only decrease in an amount the market can bear. Further, approved insurance providers have incentives not to financially stress agents to the point that they must let staff go and find other sources of income. Approved insurance providers do not want to risk that their agents would be unable to service their policyholders in accordance with the requirements in the SRA and approved procedures.

Comment: An agent commented that the premium reduction plan will increase regulation in the crop insurance industry and the delivery of the crop insurance program, thus negatively impacting farmers.

Response: RMA disagrees with the commenter's assessment on several grounds. First, participation in the premium reduction plan is voluntary and only those approved insurance providers that wish to participate will need to subject themselves to the added requirements of the interim rule. Second, the requirements in the interim rule have been drastically reduced from those in the current program or the proposed rule. These changes should substantially reduce the administrative burdens on approved insurance providers and RMA to carry out this regulation. Specifically, RMA has removed the requirements that approved insurance providers state how they will attain the efficiencies, estimate the amount of such efficiency, provide documentation to support such estimates, and determine the amount of the premium discount because these requirements are no longer necessary

now that premium discounts will be paid based on the actual cost savings of the approved insurance provider. Now all approved insurance providers must provide is the name of the person responsible for implementing the premium reduction plan, the states in which the approved insurance provider is seeking the opportunity to offer a premium discount, a credible marketing plan to ensure that all farmers, including small, limited resource, women, and minority farmers have access to a premium discount, and a certification that service will not fall below that required by the SRA and approved procedures by any cost saving measures implemented by the approved insurance provider. The burden on the back end is also reduced because the determination of efficiencies and the amount of premium discounts will now be based on the Expense Exhibits provided with the Plan of Operations and a formula that RMA will provide in procedures. Further, many of the other requirements, such as no reduction in service, having the operational and financial capacity, etc., currently exist in the SRA and are only reiterated in the rule to remind participants of their obligations under the crop insurance program.

Comment: An interested party comments that the agent is the backbone of the growth and success of this program, and agents are receiving little compensation for the amount of work that they do on behalf of the farmers of America. The commenter states that as more and more regulations and penalties are being placed on the system, the need for qualified agents to deliver this product becomes a more necessary part of the plan.

Response: RMA agrees that agents play a vital role in the delivery of Federal crop insurance to farmers and that it cannot operate without them. RMA cannot pass judgment on the amount or fairness of the compensation the agents' receive to perform this service but the level of compensation is a result of a voluntary agreement between an approved insurance provider and the agent. If compensation were too little, then the agent would not choose to enter into the agreement and if too much, then approved insurance providers would choose not to.

RMA also agrees that with the growing complexity of the crop insurance program, and RMA's vigilance in ensuring that program requirements are complied with, there is a need for knowledgeable, qualified agents. However, RMA does not believe that this interim rule will negatively affect the knowledge or skill of agents. Many of the requirements under this rule are the same requirements that exist under the SRA. Further, requiring that any premium discount be paid after cost savings have been realized will mitigate or eliminate any potential dramatic changes to the program.

Comment: Many agents and interested parties commented that commissions have been reduced drastically in the past few years and the premium reduction plan will further reduce commissions but not the workload. A commenter stated that costs are increasing. A commenter stated that agents are doing twice the work that they used to do in the past because of all the different products that have been introduced and also that they do most, if not all of the inputting of information that used to be completed at the approved insurance provider level. Commenters stated that agents are required to attend classes for updates to stay on top of the changes and accurately explain the coverage options to the farmer and agents have been very patient with the constant changes and additional requirement that have been placed upon them. A commenter stated agents also put on workshops and hire quality speakers to inform clients of the values of having MPCI insurance, and have the increased cost of software and computer updating.

Response: RMA admits that the crop insurance program has steadily grown more complex with more and varied policies available to farmers. RMA admits that agents must be trained each year to stay abreast of program changes and explain such changes to their policyholders. However, the sharing of the workload involved in the inputting of information is an issue between the agent and the approved insurance provider. RMA does not dictate who inputs this information.

Further, because commission rates are a private matter negotiated between agents and approved insurance providers, RMA cannot comment with respect to whether these commissions have been reduced drastically in recent years. However, RMA does know that in the last few years, premium volume has increased significantly as farmers purchase revenue policies and increased their coverage levels following the increase in premium subsidies in 2001. Since agent commissions are generally based on the percentage of premium, this means that although an agent's commission rate may have fallen through this period, any decline in commission rates may have been more than offset by the dramatic increase in average premium per policy. This is confirmed by expense statements provided to RMA by approved insurance providers, which show both total commission dollars paid to agents and dollars commissions per policy rising sharply since 2000.

Comment: Several agents commented RMA should strongly simplify this program, and then and only then should they consider any reduction in premiums to the agents that are working hard to provide this coverage in a timely and efficient manner. A commenter stated that there would have been premium savings to farmers, but all at the expense of the agent. For example, CRC and RA could be combined, unit structures could be simplified, and the time between releasing of Revenue Assurance Base Prices and pricing factors and sales closing date could be expanded.

Response: RMA has been striving to simply the crop insurance program. However, it must do so while still maintaining program integrity. Therefore, some of the commenters suggestions are under consideration, such as the combination of CRC and RA. However, others depend on whether adopting such changes would introduce program vulnerabilities. Even without simplification, RMA would still be obligated to make available the premium reduction plan because it is based on whether approved insurance providers can operate the program for less than their A&O subsidy. If the costs are too high under the current program, then approved insurance providers would not be able to participate. However, the intent of section 508(e)(3) of the Act is to provide the approved insurance providers with the opportunity to enter into price competition.

With respect to the commenters' prediction that premium discounts to farmers will inevitably come at the expense of agents, nothing in the premium reduction plan requires this conclusion. Approved insurance providers have to assess their business operations to determine the most appropriate place for savings. Further, commission is freely negotiated between the agent and approved insurance provider. This means agents still have a voice because if they do not like the commission they are offered, they are free to move their book of business to other approved insurance providers. The market will determine what, if any, reductions in commissions there will be.

Comment: A few agents commented that if the workload were reduced, the premium reduction plan would be tolerated.

Response: The only workload required of agents by RMA are those contained in the SRA and approved procedures. RMA continually reviews these procedures to ensure that they are meaningful and necessary. As procedures no longer become necessary, they will be removed. However, RMA is unable to reduce the workload any further than that. Further, RMA is unable to change any workload that may be imposed on the agent by the approved insurance provider. That is negotiated between the agent and approved insurance provider.

Further, it is the agent's choice whether to write for approved insurance providers that are eligible for the opportunity to offer a premium discount. As commenters have stated, there are farmers that will value superior service over the potential for a premium discount and who will remain with the agent even if the agent elects not to participate in the premium reduction plan. As RMA has continually stated, the purpose of section 508(e)(3) of the Act was to create competition so the interim rule allows the market, to the maximum extent practicable, to dictate who will participate and who will not.

Comment: A few interested parties commented that every year there are more demands placed on the approved insurance providers for training, auditing and reviewing, verifying data certified by the insureds, etc. That means that every year the approved insurance providers' costs go up. The commenter asks how RMA can expect the approved insurance provider to act on all these added demands and THEN pay them less for it on a premium reduction plan.

Response: RMA does not require that an approved insurance provider participate in the premium reduction plan. Participation is strictly voluntary. Further, no approved insurance provider can pay a premium discount until the approved insurance provider can prove that its A&O costs are less than the A&O subsidy. Since premium discounts are now based on actual cost savings, to the extent that approved insurance providers are unable to sufficiently reduce costs, the only consequence under the premium reduction plan is that no premium discount will be paid. However, if the approved insurance provider can qualify to pay a premium discount, section 508(e)(3) of the Act obligates RMA to provide the opportunity.

Comment: Several agents and interested parties commented that the lack of agents, less agency office staff, and service centers will result in mistakes made on crop policies and the whole crop insurance system will suffer, including lower or no indemnity payments. A commenter stated that the time that goes into learning all of the regulations is very high and if an agent does not take this time, the mistakes can be very costly. Another commenter stated that one reason the independent agencies are getting out of the business is the increased complexity of the program and the potential lawsuits that may be filed because of the penalties being applied for honest mistakes. A commenter stated that agents take the time to know their farmers operations.

Response: As stated above, the premium reduction plan is unlikely to result in reductions in staff if such reductions are likely to result in more mistakes. First, the litigation costs associated with such mistakes are likely to result in little if any savings upon which to pay a premium discount. Further, approved insurance providers have an incentive to ensure there is no reduction in service beyond that required in the SRA and approved procedures and the imposition of sanctions under the SRA would make it untenable to allow such a condition to exist.

Further, the commenter implies that the time an agent takes to know their policyholders' operations now might not happen under the premium reduction plan. However, under the interim rule, the payment of a premium discount is no longer guaranteed up front and the farmer will know whether the agent is providing the level of service he requires, which may exceed the level required by RMA, long before the farmer knows whether he will receive a premium discount. Therefore, agents have the incentive to ensure that their customers risk management needs are met because they risk losing a customer, even if they have complied will all required of RMA.

Comment: An interested party commented that in the event farmers are going to try to purchase this product on the web without the counsel of licensed agents, their only recourse in the event that an error is made is to sue RMA for damages. The commenter stated the farmer will make mistakes, they always do, and when they do they want someone to blame, RMA has placed the agent in the forefront of that with the SRA, and if RMA removes the agent, RMA is directly in the line of fire.

Response: RMA has not suggested and nothing in the interim rule or section 508(e)(3) of the Act suggests that the crop insurance agent should be removed from his or her role in helping America's farmers with their risk management needs. Further, RMA has not suggested that farmers be required to use the internet to purchase crop insurance. Approved insurance providers are still required to ensure that their policyholders get the service mandated by the SRA and approved procedures. Further, even if approved insurance providers elect to offer crop insurance via the internet, certain functions are still required to be performed by licensed agents and the use of the internet does not abrogate this requirement.

RMA does anticipate that information technology will likely become increasingly important in all aspects of the delivery of crop insurance. To the extent that an approved insurance provider can harness that technology for cost efficiencies for delivery of crop insurance, RMA is obligated to consider such cost efficiencies in the context of qualifying for the payment of a premium discount.

Comment: An agent commented that since a farmer's premium fluctuates as high as 10–20% every year because the prices and rates of each crop change annually, the farmer would not even notice he was getting a discount.

Response: There are price and premium rate fluctuations and coverage choices by the farmer each year that affect premiums. However, this does not mean the farmer would not notice a premium discount, especially when, under the alternative proposal adopted in the interim rule, such premium discount is likely to be in the form of a specific payment in the future. But even assuming the commenter is correct, this provides another reason why the drastic changes that commenters claim will occur are less likely. RMA has attempted to craft a program that offers the possibility of a benefit to farmers while minimizing adverse effects to the program.

Comment: Several interested parties and agents commented that farmers will be forced to make their purchase without the expertise of a local, tenured, qualified agent and the end result will most likely be greater unpaid claims when the farmers suffer crop losses. Commenters also stated that reduction in the agent force will lead to many farmers being forced out of business due to inadequate coverage levels or crop insurance simply not being practicably available in their area. Commenters stated that as many farmers become less protected due to inadequate coverage in ensuing years, there will be greater support among farmers and their farm groups for disaster aid bailouts and less support for a strong national crop insurance program.

Response: Nothing in section 508(e)(3) of the Act or in the interim rule would force local crop insurance agents out of business, thereby causing farmers to make uninformed, poor decisions, suffer from a lack of claims servicing, or be deprived of adequate local crop insurance products. The commenter's are apparently extrapolating these conclusions from an expectation that the proposed rule will cause agents' commissions to be cut so deeply that local agents will abandon their businesses in significant numbers. As stated above, it will not be in an approved insurance provider's interest to devastate its own agent force, and the service that its agent force provides, just to be able to offer a premium discount. It is also not in the approved insurance provider's best interests to take any action that could result in its customers being driven out of business.

Approved insurance providers are also not likely to take any action that could result in an inability to service policies as required by the SRA and approved procedures. In addition, as stated above, the payment of any premium discount will occur long after the farmer's policy has been serviced and a claim paid. If the farmer is not satisfied with such service or loss adjustment, the farmer is likely to move on to another agent or approved insurance provider. Therefore, under the interim rule, approved insurance providers have added incentives to ensure the proper service of farmers, which includes a skilled, knowledgeable agent force. Under the premium reduction plan contained in the interim rule, there is no reason why the crop insurance program, approved insurance providers, agents, and farmers will not continue to thrive.

Comment: An agent commented that the premium reduction plan will reduce the availability of crop insurance to our rural farmers. The commenter claims that many elder landowners rely on the agent's expertise to enable them to properly choose coverage levels, meet RMA deadlines, and inform them of new products.

Response: There is no reason to assume that crop insurance will not be available to any farmer that wants it. As stated above, the interim rule now allows approved insurance providers to select states in which it wants to participate in the premium reduction plan to avoid situations where approved insurance providers may pull out of a state to avoid having to provide a premium discount in that state. Further, approved insurance providers have an incentive to maintain their customer base in order to realize potential gains and would not take an action that would result in a lack of agents, reduction in service, or farmers seeking other approved insurance providers.

Further, RMA agrees with commenters that there are farmers who rely heavily on the agent. These are the farmers that are likely to value service over the potential for a premium discount and are likely to remain with their agent, even if the agent does not offer a premium discount. Therefore, all agents will be able to compete, either on service or with the potential for a premium discount and the market will determine how it will meet the greatest needs of farmers.

Comment: Many agents and interested parties commented that this plan is placing additional burdens and work on the farmers. Farmers have trouble enough getting their paperwork filed on time with an agent calling and explaining things to them. Commenters state that the average farmer does not understand their crop insurance policy as well as they should. Commenters state that with the premium reduction plan, farmers would be expected to understand and file their own crop insurance forms and complete the necessary requirements and very few would be able to do this as needed and required by the policy. They state that farmers would not be willing to attend meetings, updates, and review policy changes from year to year and with paperwork not being completed as necessary, many farmers could be left out in the cold come claim time. Commenters stated that farmers have come to rely on agents for assistance with reporting deadlines, screening information and quality control. A commenter stated that requiring farmers to do their own work could result in increased fraud, waste, and abuse. A commenter asked if farmers will be required to obtain E&O insurance.

Response: There is nothing in the proposed or interim rule that will increase burdens on farmers or require them to do their own work. Approved insurance providers have to evaluate their business operation to determine where it can attain savings while still maintaining its agent and customer base because the latter is where the approved insurance provider makes its profit. Approved insurance providers are also not going to take actions that will result in farmers not understanding their coverage, missing deadlines, etc. It is in the approved insurance provider's best interest to keep their customers satisfied or risk losing their customers to a competitor. Therefore it is unlikely that the tasks currently being performed by an agents would somehow, under the premium reduction plan, be shifted to the farmer—tasks such as filing forms, attending update meetings, reviewing policy changes, ensuring that reporting deadlines are met, screening information, and maintaining control over the quality of insurance information.

Further, the SRA and approved procedures mandate certain services be provided to farmers and approved insurance providers and agents can be sanctioned for failing to provide those services.

Comment: Many agents and interested parties commented that farmers are not ready to use the internet to get their service and they need the agent's expertise. A commenter stated that farmers will have to do the work themselves or go to large brokers who will not offer the kind of one on one advice the local agent gives to the farmer now. A commenter stated that having a computer and access to the internet does not make a farmer a crop insurance expert.

Response: As stated above, nothing in the proposed or interim rule requires that a farmer use the internet to purchase crop insurance, do the administrative work associated with obtaining a policy, or abandon the services provided by a traditional agent. Approved insurance providers still have the incentive to ensure their customers are satisfied or risk losing their business, which affects the approved insurance provider's profitability. In addition, the level of service required by the SRA and approved procedures must still be provided or the approved insurance provider or agent risks sanctions imposed by RMA.

Comment: Several agents commented that if farmers do not have the small town agency that they have been using they will have to go to the larger agencies which are not always close to where the farmers live. Any savings in premium could be eaten up in travel and long distance phone calls to service their crop insurance.

Response: The commenters assume that the premium reduction plan will result in the elimination of the small town agency. However, as stated above, this is not likely to be the case. The approved insurance providers have an incentive to maintain their agent bases to ensure the required level of service is provided and enable them to maximize their profitability. Therefore, the agents and approved insurance providers will determine the fair commission to allow such agents to stay in business, provide the required service, and, if possible, allow the approved insurance provider to achieve some savings.

Comment: An agent commented that it has seen how the discount can help farmers. The commenter states that many farmers chose to use the discount so that they could purchase additional coverage, and many farmers have seen the ads talking about the discount and purchased crop insurance for the first time in many years. The commenter stated that the premium discount is not going to be used by every farmer because many farmers are happy with their current coverage and agents. However, there are many farmers who do like to use the discount plan.

Response: Under the proposed rule, premium discounts were likely to increase coverage levels because they resulted in a direct decrease in the amount of premium owed, which would allow farmers to increase coverage and pay the same amount as they would under the lower coverage level. It is not clear whether the interim rule will have the same effect because farmers will not receive their premium discount until long after premiums have been paid. While hope and the intent is that farmers would use the discount to purchase additional coverage in future years, farmers are free to use the discount in any manner they choose.

RMA agrees that not all farmers are going to elect to insure with approved insurance providers that participate in the premium reduction plan. This is especially true under the alternative proposal adopted in the interim rule. Some farmers will prefer to receive superior service over the premium discount. This simply allows another mechanism for competition, price and service, and the market will determine which farmers value most.

Comment: An agent commented that the premium reduction plan encourages farmers to go for quick and easy fixes rather than determining which true ''risk management'' solutions may best fit their operations, which can lead to less information and less proper risk management. The commenter stated that purchasing additional coverage with the discount is not always beneficial because it may not be economical and farmers may actually receive a reduced disaster payment.

Response: Under the alternative proposal adopted in the interim rule, no premium discount is guaranteed up front. Therefore, farmers have no incentive to go for quick and easy fixes. Because the premium discount payment is based on actual costs and may never be paid for a reinsurance year, it is unlikely farmers' behavior will change much and it is likely that they will continue to seek the best risk management tools for their operation. Further, although premium discounts can be used to purchase additional coverage, there is no requirement that they do so. The purpose of section 508(e)(3) of the Act is to allow farmers to benefit from price competition, which is what the interim rule does.

Comment: A farmer commented that the premium reduction plan will result in farmers being left without coverage and service needed to protect their crops.

Response: It is unclear from the comment why the commenter would predict that farmers would be left without coverage as a result of the premium reduction plan. If the commenter is concerned that agent commissions will be reduced to the point that there will no longer be agents in the area to serve the farmers, as stated above, this is not likely to occur. The approved insurance provider has too much incentive to maintain its customers and agents to cut commissions to the point that either or both may go to another approved insurance provider. Further, approved insurance providers are required to provide service to farmers as required by the SRA and approved procedures. Approved insurance providers are not going to risk sanctions under the SRA by taking actions which may result in a reduction in this required service.

b. Administration and Verification

Comment: An agent suggested that RMA only allow those approved insurance providers with strong financial positions and a strong management teams to participate in the premium reduction plan. The commenter suggested an approved insurance provider allowed to pay a premium discount should be in a strong financial position (EX: At least an A–A M Bests rating), not just partnered with a strong reinsurer. The commenter also suggested an approved insurance provider allowed to pay a premium discount should have an experienced management team with minimal turnover of upper management and have trained adjustors in EVERY state in which they write business.

Response: To participate in the premium reduction plan under the interim rule, an approved insurance provider must first qualify financially and operationally under the SRA. After the insolvency issues regarding American Growers, RMA has heightened its scrutiny of the approved insurance providers and has required more detailed financial information. Further, under the alternative proposal adopted in the interim rule, RMA approval for payment of premium discounts is conditioned upon the existence of actual cost savings and the approved insurance provider's compliance with the SRA, including being in an acceptable financial condition. Since approval of the payment of an amount of premium discount will not occur until after the end of the reinsurance year, RMA should be in a good position to ensure that the payment of a premium discount will not jeopardize the financial condition of an approved insurance provider.

Further, because the approval of the payment of premium discounts is based on actual cost savings and is made after the financial condition of the approved insurance provider is known, there is no need to add requirements to those provided for in the SRA regarding the partnering of approved insurance providers with strong reinsurers and the makeup and turnover of the management teams. The requirements in the SRA should be sufficient to ensure the continued financial stability of the approved insurance providers.

With respect to loss adjusters, the loss adjustment process under the premium reduction plan is no different than under the current policies and approved procedures. Therefore, there is no need to impose additional requirements regarding the availability and location of loss adjusters. Further, market forces are likely to play a significant role because if farmers' claims are delayed, they are likely to move to another approved insurance provider. Therefore, the suggested changes have not been made.

Comment: Several agents and interested parties suggested RMA consider a premium modification plan that is based on a farmer's good experience or loss history. A commenter states that this will reward the top farmers and give incentive for quality farming practices by all farmers. One commenter stated it has a hard time believing a farmer deserves a discount and a loss check in the same year.

Response: There is no rational basis to condition the payment of the premium discount on whether the farmer was paid a loss in a crop year or their experience. Under section 508(e)(3) of the Act, approved insurance providers can pay premium discounts to their farmers if they can prove that their actual A&O costs were less than their A&O subsidy. The loss history has no bearing on whether such efficiency is attained for a particular reinsurance year. Further, even though in years of high losses where it may be difficult for the approved insurance provider to achieve the requisite savings because of the increased loss adjustment expense,

there is no justification to punish farmers because of the vagaries of weather or other natural disasters. If the approved insurance provider attains an efficiency, it must be permitted to pay the premium discount to all its farmers. Therefore, the suggested changes have not been made.

Comment: An agent commented that if RMA still thinks it needs to offer a premium reduction plan, then the premium discount should be the same no matter which approved insurance provider or agent the farmer buys it from and there would need to be less regulation and paperwork involved in order for an agent to make a living selling it.

Response: RMA has no choice with respect to whether it will make the premium reduction plan available to approved insurance providers. Section 508(e)(3) of the Act provides approved insurance providers with the right to request to be able to pay premium discounts and if an efficiency is attained, RMA can only limit the manner in which such payments are approved to be made. Further, RMA cannot require all approved insurance providers pay the same amount of premium discount. The payment of a premium discount is conditioned upon the approved insurance provider attaining an efficiency and the amount must correspond to the amount of such efficiency. Since the approved insurance providers all have different compositions of their books of business and operations, it is highly unlikely that approved insurance providers will be able to attain the same amount of savings in the same places. Therefore the suggested changes have not been made.

Comment: A few agents suggested that if RMA must keep the premium reduction plan, keep it the way it was planned—through the internet exclusively.

Response: There is no rational basis to restrict the premium reduction plan to the use of the internet or any other specific cost efficiency. It is the approved insurance providers who are to determine whether they can deliver the program for less than the A&O subsidy. They are in the best position to determine how to attain savings based on their individual operations. It would be arbitrary and capricious for RMA to dictate the manner in which the efficiencies must be attained, especially since such a requirement could penalize farmers who do not have access to the internet. Therefore, the suggested change has not been made.

Comment: A few agents expressed concern that nothing in the rule defines expectations for agents selling for more than one approved insurance provider.

Response: RMA agrees with the commenter that the proposed rule did not address expectations for agents selling for more than one approved insurance provider. However, RMA agrees that there may be legitimate concerns that agents that write for more than one approved insurance provider will direct the large policies to the approved insurance provider that is eligible for the opportunity to offer a premium discount and the small farmers to its other approved insurance providers. Such a practice is unlikely to persist in the long run because those approved insurance providers that write only small policies through an agent are apt to either require more equality in the distribution of policies from the agent or sever their contractual relationship with the agent. However, to ensure that no unfair discrimination occurs, the interim rule now requires agents to inform their insured of all approved insurance providers they write for that are eligible for the opportunity to offer a premium discount.

Comment: An interested party commented that it should remain a concern for RMA that allowing access to approved insurance providers that own their own reinsurance company could compromise the program.

Response: RMA agrees that if commercial reinsurance market transactions are not excluded from consideration when determining an efficiency, the A&O costs may not reflect the actual cost to deliver the program. Commercial reinsurance has nothing to do with the delivery of the crop insurance policy to the farmer. It is a tool for approved insurance providers to be able to manage their risk and each approved insurance provider handles commercial reinsurance differently. Therefore, the interim rule considers A&O costs to include only compensation paid, loss adjustment expenses, and other operating expenses reported on the Expense Exhibits provided with the Plan of Operations and has revised the definitions of ''A&O costs,'' ''A&O subsidy,'' and ''efficiency,'' to clarify that any costs incurred or commissions earned from commercial reinsurance are not included for purposes of the premium reduction plan.

Comment: An approved insurance provider commented that the proposed rule does not assist it in lowering its current administrative and operating expenses to a level that would qualify it for a premium discount. The commenter stated the inefficiencies in the Federal crop program are a direct result of the costs associated with interpreting, maintaining and implementing the regulatory requirements to administer the program to the greatest extent possible. The commenter states it prides itself on its compliance with these guidelines and feels a huge responsibility to provide financial security to the farmers in the States where it does business. Any type of approved premium reduction plan must be based on a strict and enforceable process with the appropriate penalties in place to ensure the approved provider is not compromising service to the farmer.

Response: RMA agrees that the premium reduction plan does not tell approved insurance providers how to be able to deliver the program for less than their A&O subsidy. It would be impossible to do so since each approved insurance provider operates differently and is in the best position to determine whether efficiencies can be had in its operation. RMA also agrees that the premium reduction plan must be based on a strict enforceable process with appropriate penalties. To accomplish this goal, RMA adopted the alternative proposal because it would require the approved insurance provider to prove actual costs savings instead of relying on projections that might not be realized. There are also provisions in the interim rule that require that determinations of A&O costs be based on Expense Exhibits that are provided with the Plan of Operations and audited and certified by an independent certified public accountant experienced in insurance accounting after the reinsurance year and before any premium discount can be approved. Further, determinations of the premium discount that can be paid in the state are based on a formula that will be provided to the approved insurance provider through procedures. The standard of service that will be used to determine whether there has been a reduction in service are those currently contained in the SRA and approved procedures. These and other provisions in the interim rule create a strict and enforceable standard that can be applied to all approved insurance providers. In addition, RMA has added different sanctions, such as withdrawing approval for all or part of the payment of a premium discount and disqualifying agents or approved insurance providers from participating in the premium reduction plan, that allow it to better tailor the sanction to the offense.

Comment: Several approved insurance providers, loss adjusters and interested parties commented that if the

proposed rules are adopted in their entirety and, more importantly, followed and evenly enforced for all signatories by RMA, it does not appear that any of the current approved insurance providers would meet the eligibility criteria. A commenter stated that reductions in the A&O subsidy rate will make it impossible to reduce expenses below the A&O subsidy paid by RMA. A commenter stated that it is even more difficult to envision an approved insurance provider being able to provide a premium discount based on delivery cost efficiency because implementation of the Combo Policy, a new DAS, and CIMS will require millions of dollars to be expended by RMA and the approved insurance providers, and will cause a significant strain on staffing resources for both RMA and the approved insurance providers for several years to come.

Response: Under the interim rule, it is unlikely that any approved insurance provider would fail to be determined eligible for the opportunity to offer a premium discount. However, it is true that not every approved insurance provider may attain sufficient savings to enable them to receive approval to pay a premium discount. The purpose of section 508(e)(3) of the Act is not to guarantee that all approved insurance providers will qualify to pay a premium discount. Section 508(e)(3) simply gives approved insurance providers the opportunity to compete on service and price and farmers the opportunity to receive a benefit they may not otherwise receive. Because the premium discount is no longer guaranteed up front, there should be no harm to approved insurance providers if they cannot pay premium discounts because the farmers should not have expectations regarding the guaranteed receipt of such discounts.

Comment: An agent questioned the proof for RMA's statement that ''it was also easy to determine whether the reduction in premium from the efficiencies corresponded to the states from which they were derived.''

Response: The commenter is referring to the background section of the proposed rule dealing with RMA's experience in approving the approved insurance provider currently authorized to offer a premium reduction plan. The full quote is: ''It was also easy to determine whether the reduction in premium from the efficiencies corresponded to the states from which they were derived since the same efficiencies and same reductions applied to all states in which the approved insurance provider wrote business.'' In other words, RMA analyzed the expense schedules of the approved insurance provider before and after the application of cost efficiencies, including state level information on agent commissions. What RMA found in examining these documents was that the cost efficiencies (cost reductions) proposed by the approved insurance provider were proportionately the same for each state and, in total, were equal to the single percentage amount of premium discount sought by the approved insurance provider to be offered in all states. Therefore, the approved insurance provider complied with the requirement in section 508(e)(3) of the Act that premium discounts must correspond to cost efficiencies. The fact that a comparison of the exhibits in this particular application so clearly demonstrated correspondency is the basis for RMA categorizing the process as ''easy.'' The same was not true for other applications that RMA received.

However, RMA has developed a relatively simple means to allow for state variability through the approval of premium discounts for each state selected by the approved insurance provider. It developed a formula that could be applied based on the information already submitted by the approved insurance provider on the Expense Exhibits provided with the Plan of Operations. This formula works with all business operations and provides an easy means of allocating costs.

Comment: An agent commented that the rule does not address the issues and problems raised by the diverse applications received by RMA. The commenter stated that it raised the same issues in 2003 and that if the premium reduction plan continues it will lead to the demise of the crop insurance program and Congress having to authorize record breaking ad hoc disaster relief.

Response: While the proposed rule sought to eliminate the problems and issues raised by the diverse applications received from approved insurance providers by requiring the same premium discount be provided in all states in which the approved insurance provider did business, RMA realized that such a proposal did not meet the business operations of all approved insurance providers. From comments and analysis provided to the proposed rule, RMA realized that allowing approved insurance providers to select the states where they want the opportunity to provide a premium discount allowing variations in premium discounts between states were important to the financial stability of the approved insurance providers and the crop insurance program. As a result, RMA adopted the alternative proposal that, as stated above, would allow the selection of states and state variability. For instance, the issue raised in some applications that allowed its agents to carry both the premium reduction plan and non-premium reduction plan policies for the same approved insurance provider is addressed in the interim rule by requiring agents to notify their policyholders and applicants of the names of all approved insurance providers that are eligible for the opportunity to offer a premium discount. Further, the concerns about the ability to allocate costs and provide cost projections for savings have been eliminated through the adoption of the alternative proposal.

Comment: An interested party comments that RMA cites an example of a 3 percent across the board computing cost efficiency. The commenter states that RMA states this would warrant a single discount across an entire book of business. However, if the efficiency to discount relationship is at the plan of insurance level, an approved insurance provider should first allocate computer costs across plans of insurance. The commenter states that if it costs $50 in computer costs per policy, but each policy generates a different amount of premium, then the application of an equal discount, say 1% will not correspond to the efficiency at the plan of insurance level. For example, policy A generates $1,000 in premium and costs $50 in computing costs. Policy B generates $500 in premium and costs $50 in computing costs. A 1% discount results in $10 in savings on policy A and $5 in savings on policy B. Yet the efficiency is the same dollar amount for both policies. Clearly the discount does not correspond to the efficiency in this case.

Response: The commenter is correct that the percentage may not be the same on a plan of insurance basis. However, nothing in section 508(e)(3) of the Act requires that the efficiencies and corresponding premium discounts be determined on a plan of insurance level. It would be impossible to administer the program at such a level because approved insurance providers do not report their costs on a plan of insurance basis. RMA would never be able to verify such costs, it could lead to manipulations of cost allocations in order to achieve savings.

As other commenters have pointed out, to properly be able to administer the premium reduction plan RMA needs to develop a rule that is clear, strict and enforceable. Based on the comments,

RMA determined that the proposed rule did not meet these criteria because they still may have required complex accounting rules and did not allow sufficient flexibility for the different business operations of the approved insurance providers. However, RMA believes the interim rule accomplishes these goals. The criteria for cost allocation is relatively simple, based on reported and verifiable information, contained in a formula that minimizes the opportunities for the manipulation of cost allocations, and it allows the flexibility for approved insurance providers to select the states in which it wants to participate in the premium reduction plan and allows variation in the amount between states.

Comment: An interested party commented that the current proposed rule does not provide for penalties or sanctions for a submitter that does not achieve the projected savings. The rules must provide for penalties for misrepresentation of a provider's ability to provide the premium reduction plan according to the established criteria; *i.e.*, reject any and all future premium reduction plans, charge the amount of the premium discount as a policy surcharge in the following year, require that amount as an additional expense in each of the next two reinsurance years, etc.

Response: Since RMA has adopted the alternative proposal in the interim rule, the concerns of the commenters are moot because all premium discounts will be based on the actual savings achieved by the approved insurance provider and the content of any information that can be provided to farmers regarding the certainty or amount of premium discounts to be paid under the premium reduction plan is severely limited prior to actual results being available and RMA approving the payment. This eliminates the need for penalties for approved insurance providers that fail to pay premium discounts unless the approved insurance provider or its agents violates a requirement in the interim rule. In such case, as stated above, RMA has added significant sanctions that allow it to better tailor the punishment to the offense.

In addition, the market will likely naturally sanction approved insurance providers that do not pay premium discounts. Farmers who insure with approved insurance providers that are eligible to offer a premium discount but who continuously fail to do so would be likely to move their business to an approved insurance provider that does pay the premium discount.

Comment: An agent commented that it could be difficult to impossible for discounts to be ''verifiable''. For example, the 2003 plan allows a reduction for the farmer reporting via the internet. The documentation submitted pointed to a reduction in approved insurance provider time in gathering and entering this information. However, there was no mention of the cost to the farmers who were too busy to report the information or the possibility of the farmer entering it incorrectly because they didn't understand all the rules. The result is a cost to the farmer far greater than what is saved. The commenter stated that while many proposals can outline what they think will be the savings, the added costs must also be considered (which in many cases will be a net cost to the farmer!)

Response: RMA disagrees with the comment that its ability to verify cost efficiencies would be difficult to impossible. First, the efficiencies are measured by whether the approved insurance providers A&O costs are less than the A&O subsidy it receives from RMA. The cost to farmers because the farmer may have to do additional work is not considered unless this burden results in higher costs to the approved insurance provider as a result of having to make corrections or in legal expenses.

Further, under the interim rule, the costs are easily verifiable because RMA is using the actual costs contained in the Expense Exhibits provided with the Plan of Operations to determine efficiencies. These Expense Exhibits are verifiable through the statutory accounting statements and now require that an independent certified accountant with insurance experience audit and certify these Expense Exhibits. Increase in approved insurance provider costs because of farmer error would be reflected in these actual costs. Further, if farmers are required to do more work with an agent or approved insurance provider, he may choose to move to another agent or approved insurance provider that provides the service he desires.

Comment: Many agents, approved insurance providers and loss adjusters commented that RMA is proposing a plan that will require considerable auditing expertise. The auditing would primarily be in the area of approved insurance provider expenses and policy issuing discrimination. The commenters ask if RMA can say, with confidence, that they have sufficient resources to assure the American taxpayer that the premium reduction plan is being fairly administered.

Response: RMA agrees that the proposed rule required considerable auditing skill to determine whether the projected cost savings were reasonable, were actually achieved, and the cost allocations appropriate. The interim rule reduces this burden considerably. First, the efficiencies are determined based on the actual costs reported on the Expense Exhibits provided in the Plan of Operations, which RMA staff is already familiar with. Second, the cost information can be readily verified through the annual accounting statements approved insurance providers are already required to file and the audit, certification and verification of the actual costs as reported in the Expense Exhibits. Lastly, the cost allocations have been simplified and contained in a formula that will be provided to approved insurance providers in procedures. Based on these changes, the current skill and knowledge of RMA employees should be sufficient to administer the premium reduction plan.

However, RMA disagrees that the premium reduction plan will require extensive auditing to discover evidence of unfair discrimination. The interim rule now contains provisions that put approved insurance providers on notice that RMA may compare the composition of its book of business to other approved insurance providers in the state to determine whether there are differences that may warrant further investigation to determine whether unfair discrimination is occurring. This information is currently contained in RMA's databases and would require no more sophisticated auditing than currently done by RMA when it runs certain queries for the purposes of its annual summary of business, compliance reports, data mining, etc. In addition, provisions have been added that allow consumer complaints to be made to RMA. These complaints will also be investigated.

Comment: A few approved insurance providers and interested parties commented that all costs should be evaluated by a CPA or auditing firm at the end of each crop year to assure compliance with the established criteria for offering the premium reduction plan.

Response: The interim rule contains a provision that the Expense Exhibits provided with the Plan of Operations, which will be used to determine any efficiency, must be audited and certified by an independent certified public accountant with experience in insurance accounting.

Comment: An agent commented that the RMA plan includes audit expenses to monitor the program. The commenter

states that more auditing should be directed toward fraud and abuse by some farmers than the approved insurance provider's expenses.

Response: While RMA agrees with the commenter that fraud and abuse are worthy of considerable and increased attention, RMA has no choice but to implement the premium reduction plan and ensure it complies with the requirements of the Act. Based on the nature of the premium reduction plan, compliance requires that RMA be able to verify expenses. By structuring the interim rule so that existing documentation is used to determine efficiencies and verification, the burden imposed on RMA should be minimal and not affect its ability to discover and investigate fraud, waste, and abuse.

Comment: Several interested parties and agents commented that the proposed rules contain no mechanisms to detect and prevent anti-consumer practices, such as rebating and tying, under the premium reduction plan. A commenter states that creation of an enforcement office would be necessary to monitor anti-consumer practices and address farmer complaints. Commenters state that RMA does not have the resources to police these practices.

Response: RMA agrees with the commenters that market conduct issues under the premium reduction plan are a significant concern. However, RMA disagrees with the comment that the creation of an enforcement office is necessary to monitor such conduct under the premium reduction plan. The premium reduction plan should have no effect on whether such rebating or tying occurs and RMA is currently monitoring such conduct today. Further, conduct such as tying is also regulated by the states, which have well-established structure for detecting and preventing tying. Moreover, RMA is fostering closer ties to the states through recently signed Memoranda of Understanding that will expand information sharing between the states and RMA. These measures should result in synergies between state and federal regulators that will strengthen market conduct enforcement, not only for the premium reduction plan but for the entire crop insurance program. In addition, RMA has added provisions that allow consumer complaints to be made directly to RMA and would include market conduct complaints.

Comment: Many interested parties and agents commented that there are insufficient resources and expertise to timely and properly evaluate the proposed premium reduction plan submissions, regulate the process, and monitor the program to ensure adequate service and prevent abuses. Commenters stated that if there were sufficient resources, the cost of those resources would far outweigh the minimal benefits offered to farmers through the proposed premium reduction plan rule. A commenter stated that RMA has a responsibility to supervise the approved insurance providers to determine whether they are operating in a financially sound manner without reducing service to the farmer. A commenter asked how RMA proposes to monitor, control and advance the premium reduction plan. A commenter stated that the rule does not discuss RMA's resource needs but that it is likely RMA will need to establish a premium reduction plan office.

Response: Under the proposed rule, the premium reduction plan demanded considerable resources to evaluate the requests to participate in the premium reduction plan. However, RMA has taken two significant steps to ensure that it has the resources needed to perform these tasks effectively. First, is the adoption of the alternative proposal. Since the premium discount is based on actual costs, there is no longer a need for RMA to have the resources and expertise to conduct extensive audits to verify both forecast expenses under the requests to participate in the premium reduction plan and actual expenses and efficiency savings after the reinsurance year. Under the interim rule, RMA would only have to evaluate the approved insurance provider's marketing plan. Determinations of financial condition would be included in the evaluation of the approved insurance provider's Plan of Operations. Further, since approval of the payment of a premium discount and the amount allowed are based on actual cost savings and after losses have been paid, RMA is in a much better position to evaluate the financial impact of paying such discounts on approved insurance providers.

The second step is that RMA has structured the interim rule so existing documentation, such as Expense Exhibits provided with the Plan of Operations under the SRA, are used. The result is that much of the evaluation and monitoring under the interim rule would be the same as is required for any approved insurance provider under the SRA, including the determinations of financial solvency. In addition, RMA has established a formula that can be applied to each approved insurance provider's operation to allow it to calculate the efficiencies in each state so it can determine the amount of premium discount. Since little additional work is required, RMA should not require significant additional resources to complete these reviews. Therefore, the costs of regulation should not exceed the benefits of premium discounts to farmers and no special premium reduction plan office is needed.

Comment: Many approved insurance providers, interested parties and agents commented that the proposed rule should be shelved or there should be an indefinite extension of the comment period. A commenter asked that RMA postpone adopting rules and approving new premium reduction plans until it: (1) Develops an adequate evidentiary record and makes available for public comment rules that address the adverse consequences that these programs may have on delivery service levels and on farmers; (2) establishes an enforcement mechanism that protects farmers from unfair discrimination under the premium reduction plans; and (3) can avoid adopting rules that include reductions in agent compensation which would decrease the amount and quality of services available to farmers under the current crop insurance delivery system.

Response: Based on the changes to the proposed rule discussed above, there is no need to extend the rulemaking at this time. However, as stated above, RMA has elected to publish this rule as an interim rule to allow for additional comments after the premium discount plan is implemented. Further, the interim rule clarifies the requirements regarding the service of farmers and believes that the current sanctions in the SRA and those included in the interim rule should provide sufficient deterrent to the possibility of a reduction in service below that required in the SRA and approved procedures. In addition, the alleged reduction in service is purported to be a consequence of severe reductions in agent commission, and as stated above, the adoption of the alternative proposal and market forces make this less likely.

With respect to the enforcement mechanism that protects farmers against unfair discrimination, the interim rule contains provisions that allow RMA to compare books of business to determine whether such discrimination is occurring, places the burden on approved insurance providers to target marketing to all farmers in a state, including small, limited resource, women and minority farmers, and contains sanctions that would be a deterrent to discriminatory practices, such as withdrawal of eligibility if the approved insurance provider unfairly discriminates, the denial of all or part of the premium discounts if an approved insurance provider or its agents unfairly discriminates and disqualifying the

approved insurance provider or agent from participating in the premium reduction plan.

With respect to the concern that agent commission will decrease to the point that there will be a reduction in service, as stated above, there are many market forces and regulatory sanctions that make this unlikely. One is that approved insurance providers have the incentive to retain agents and farmers to maximize their capacity for underwriting gains. Another is that approved insurance providers could risk significant sanctions under the SRA if they reduce service below that required in the SRA and approved procedures. Agents are also likely to move their book of business if the reductions in commission are too severe. No changes have been made in response to this comment.

Comment: An approved insurance provider commented that the proposal suggests that costs are to be determined on a reinsurance year basis but will use SRA Expense Exhibits, which are on a calendar year basis. The commenter claimed there will be allocation, monitoring and audit issues because such costs will have to be converted to a reinsurance year basis. The commenter stated this will be further complicated because certain costs may have to be allocated between several different lines of insurance. The commenter stated it is unlikely RMA's goal that efficiencies be easily verifiable is attainable.

Response: In Appendix II of the SRA that is effective for the 2005 and future reinsurance years, several expense exhibits are required. Exhibit 18B is a calendar year accounting of expenses that can be reconciled to the Annual Statutory Accounting Statements required by state regulators. However, Exhibits 10m, 10n, and 10o show agent commission expenses by state, loss adjustment expenses by state, and total expense by category, respectively, for the prior reinsurance years, the current reinsurance year, and the forecast for the coming reinsurance year. These exhibits can be reconciled with those for the calendar year guidance that has been provided to the approved insurance providers. Further, the interim rule requires that these Expense Exhibits be audited and certified by a certified public accountant experienced in insurance to verify the reported costs and compliance with the requirements of the SRA.

Since premium discounts will be based on the actual costs and the savings attained in a specific reinsurance year, RMA has developed a formula that allows it to use Expense Exhibits 10m and 10n to allocate certain costs to the state so that it can determine the maximum premium discount that can be offered in the state. The formula will be provided to the approved insurance providers in procedures. The use of these Expense Exhibits and the procedural formula should greatly simplify the process.

Comment: Several approved insurance providers, interested parties and agents suggested that an independent CPA or auditing firm should be retained to provide comprehensive and objective evaluation of premium reduction plans that are submitted to assure that such plans meet or exceed the requirements outlined in the regulations. A commenter stated the auditor must know and understand how the costs have been allocated and if the allocations are complete, reasonable and accurate.

Response: Adoption of the alternative proposal eliminates much of the accounting burden associated with the proposed rule, specifically the burden to verify cost projections. However, RMA agrees that the actual costs should be audited and certified by the independent certified public accountant and that such person be experienced in insurance accounting so that they can understand the information contained in the Expense Exhibits to determine whether such information is complete, accurate and complies with the SRA. This requirement has been included in the interim rule. However, RMA believes that its staff is qualified to review other aspects of the request to participate in the premium reduction plan and approval to pay a premium discount.

Comment: An agent commented that according to the **Federal Register** information, the estimated total public burden is 7,560 hours annually. The commenter asked that if the Administrator is requesting an increase in staff years by 17 to meet the current workload, how many additional staff years will be required for the premium reduction plans and what will the additional cost be.

Response: This comment is referring to the paperwork burden estimated by RMA, as required under the Paperwork Reduction Act. It was an estimate of the total amount of time spent annually by all potential approved insurance providers to read, understand, develop, prepare, and submit a revised Plan of Operations under the SRA that would qualify for the premium reduction plan under the proposed rule. The commenter appears to mistakenly assume that it reflects an estimate of RMA resources needed to regulate the premium reduction plan. It does not represent such an estimate. Further, as stated above, much of the information collections have been revised significantly in the interim rule so the paperwork burden hours for approved insurance providers has been significantly reduced. In addition, as stated above, the burden on RMA to determine eligibility for the opportunity to offer a premium discount and approval of the payment of an amount of premium discount should also be significantly reduced.

Comment: Several approved insurance providers and interested parties commented that regardless of the mechanism adopted by RMA to administer the submission and approval of premium reduction plans, it will be the adequacy and sufficiency of the RMA supervision that will determine the success or failure of the premium reduction plan. A commenter questions whether RMA is equipped to oversee the delivery of the premium reduction plan by the seventeen approved insurance providers, due to apparent deficiencies in accounting and fiscal expertise, as well as the lack of financial and personnel resources. Furthermore, budgetary constraints already are having an adverse effect on RMA's information technology capabilities and RMA's data-mining initiative may be in jeopardy. A commenter asked that if RMA does not have the financial resources to accomplish its existing obligations, how RMA proposes to regulate the respective premium reduction plans of seventeen approved insurance providers. A commenter stated that this oversight function will have to be developed at a time when RMA faces a significant loss of staffing due to pending retirements within all program areas of RMA and the premium reduction plan will put additional strain on RMA's ability to fully manage the program while simultaneously ensuring compliance.

Response: Although the commenters do not specifically define what success or failure of the premium reduction plan might be, RMA would generally agree that RMA must adequately regulate the premium reduction plan if it is to not adversely impact the crop insurance marketplace or policyholder service. RMA also agrees that under the proposed rule, the premium reduction plan supervision would have required considerable personnel resources, financial resources, and expertise. However, as stated above, with the adoption of the alternative proposal, the oversight, accounting and auditing burden on RMA is significantly reduced to not much more than would be

required when approving the Plan of Operations and oversight of the SRA. Use of a procedural formula to determine the amount of premium discounts also simplifies the process. Further, RMA's monitoring of the means used to accomplish the savings is limited to the assurances that there is no reduction in service. RMA has also enlisted the states in monitoring market conduct. Consequently, RMA is confident that it has the resources and expertise to adequately regulate the premium reduction plan.

Comment: An interested party asked how RMA plans to exercise oversight to ensure that premium discounts are commensurate with savings. The commenter wants to know at what level does the efficiency rule apply and how does RMA plan on enforcing this rule, given that approved insurance providers write insurance in different states.

Response: Although State variation was not permitted under the proposed rule, as stated above, RMA has reconsidered this program feature based on public comments. The interim rule now allows for variation of premium discounts by state to the extent that such discounts correspond to documented cost efficiencies for each state. With the adoption of the alternative proposal, state level costs can be documented and verified at the end of the reinsurance year through the use of state level expense reports that approved insurance providers already prepare for their annual Plan of Operations and by using relative simple procedures to allocate remaining costs by state. Further, as stated above, RMA has developed a formula to allow it to determine the maximum amount of premium discount that can be paid in each state, which will be provided in approved procedures. Therefore, it should be relatively simple to determine whether the premium discounts correspond to the efficiencies attained in the state. However, because costs are not reported below the state level, it would be impossible for RMA to track efficiencies below this level without the development of complex cost accounting rules, which other commenters have asked RMA to avoid.

Comment: An approved insurance provider commented that the proposed rule suggests that RMA puts undue emphasis on simplicity. In doing so, RMA inadvertently acknowledges that it has neither the accounting expertise to evaluate proposed plans nor the resources to monitor their implementation. The commenter states that penalizing an approved insurance provider for proposing a plan that accounts for the many state-, crop- and policy-related variables, as opposed to one that merely is easily verifiable, burdens the approved insurance providers with RMA's shortcomings. The commenter states that adequate oversight and the availability of resources, not the dumbing-down of proposed plans, will ensure the proper regulation of premium reduction plan. RMA deludes itself if it believes that an easy or simple plan will not spawn program abuse.

Response: RMA disagrees with the commenter's premise that RMA wanted simplicity simply because it lacked the resources to adequately review, implement or monitor the premium reduction plans that contained state, crop or policy variability. On the contrary, in considering premium reduction plan submissions and developing the interim rule, RMA discovered through its analytical expertise and resources that more complex plans had the general tendency of providing increased opportunities for unfair discrimination and abuse of the premium reduction plan. In keeping the premium reduction plan relatively simple, therefore, RMA was led by a desire to avoid abuse under the premium reduction plan, not by a fear of complexity.

From its evaluation of public comments, RMA acknowledges that the proposed rule did not adequately meet this goal. This is one of the reasons it adopted the alternative proposal in the interim rule. RMA also realized that a one-size fits all approach would not be fair to approved insurance providers with different business operations. Under the alternative proposal, approved insurance providers can now tailor their premium discounts to better meet their business operations. While there may be a single formula used to calculate the amount of premium discount that can be paid in a state, this formula is flexible enough to encompass a broad range of different business operations. It allows approved insurance providers to select states in which they want the opportunity to offer premium discounts. It also allows for variability in the amount of premium discount between states. Variability between crops and policies is still precluded because of concerns regarding unfair discrimination.

Further, because premium discounts are based on actual cost savings determined from information that is already submitted to RMA and verified with statutory accounting statements, an approved insurance provider's opportunity to manipulate or hide costs is drastically reduced.

Comment: An interested party commented that the proposed rule has some standards but they are not adequate enough to protect the delivery system.

Response: RMA agrees that the proposed rule may not have contained sufficient standards to implement and regulate the premium reduction plan. However, adoption of the alternative proposal removes the need for many standards because the premium discount will be based on actual cost savings, not projected. This means the only standard that is necessary is how to determine whether there has been an efficiency and the amount of premium discount that can be paid in each state. For the former, RMA will be reviewing the Expense Exhibits provided with the Plan of Operations. Since the manner in which such Expense Exhibits are to be prepared has already been provided, no new additional standards are required. As stated above, in determining the amount of premium discount, RMA has developed a formula that will be provided to approved insurance providers through procedures. Because the formula uses only information contained on these Expense Exhibits, additional standards are not required.

With respect to other standards, the interim rule contains provisions regarding the ability to compare the composition of approved insurance providers' books of business to determine whether there is an indication of unfair discrimination that may warrant further investigations. There are also explicit limitations on advertising and the meaning of reduction in service has been clarified to incorporate the requirements that currently exist in the SRA and approved procedures. Therefore, RMA believes that the interim rule contains sufficient standards to allow it and the approved insurance providers to implement the premium reduction plan.

Comment: An interested party commented that approved insurance providers can achieve cost reductions in a variety of ways, such as training costs, etc. The proposed rules are not specific enough as to how and where the savings will come from.

Response: Since each approved insurance provider's business operation is different, it would be impractical and undesirable for RMA to dictate how and where the savings must come from. This must be determined by the approved insurance provider. However, RMA has made it very clear that cost savings cannot come from non-compliance with requirements of the SRA or approved procedures or the approved insurance provider will be subject to the sanctions

contained in the SRA or the interim rule as applicable. This would include the requirements regarding service, training, loss adjustment, etc. This means it is solely the responsibility of the approved insurance provider to decide whether it can attain cost savings while still complying with all requirements of the SRA, approved procedures and this interim rule.

Comment: An agent commented that while the proposed rule would authorize RMA oversight of the program there are no standards of measurement for compliance in the proposed rule. The commenter stated that this would leave open the opportunity for abuse, as the judgment for what constitutes a violation would now be very subjective.

Response: RMA agrees that there were insufficient standards in the proposed rule, especially concerning service and unfair discrimination. This issue has been evaluated in the light of public comments received and addressed in the interim rule. As stated above, the interim rule makes it very clear that approved insurance providers must comply with all requirements of the SRA and approved procedures regarding the level of service that must be provided. Further, specific standards have been set forth regarding allowable marketing of premium discounts. The use of Expense Exhibits to determine whether there is an efficiency and the amount of any premium discount also sets a very clear standard. Providing a formula to determine the amount of premium discount also sets a very clear standard. In addition, the ability to compare the approved insurance providers' books of business to determine whether there is any indication of unfair discrimination also sets a standard. These standards remove the subjectivity and permit all approved insurance providers to be treated the same.

Comment: Several approved insurance providers, agents and interested parties expressed concern over the cost and expense accounting. A commenter stated that it concurred with a quote from a member of Congress to RMA stating that premium reduction plans are fraught with risk to the stability of the crop insurance program and that it is opposed to the program. A commenter asked that since each approved insurance provider has its own method of operation, how RMA will develop a set of accounting standards which will show the actual costs to deliver the program. A commenter stated that most of these costs will be allocated, which creates the possibility to shift costs between states, coverages, crops, plans of insurance and market segments. This will increase the cost of auditing as the approved insurance providers will understand their individual accounting system better than RMA. A commenter is concerned that RMA is not looking at all costs that an approved insurance provider incurs and all allocations are not being reviewed to determine that they are adequate for an approved insurance provider. Commenters state it will be virtually impossible to accurately determine and verify the cost reductions and make appropriate comparisons between approved insurance providers. A commenter stated that there needs to be consistent expense accounting with respect to executive compensation, benefits, legal fees, and litigation expenses. A commenter stated that there has to be uniformity with each approved insurance provider and that premium reduction plan approved insurance providers must be subject to the same financial and competency evaluations as regular approved insurance providers.

Response: RMA agrees that cost and expense accounting procedures vary by approved insurance provider and that consistent principles must be applied to all approved insurance providers participating in the premium reduction plan. To accomplish this goal, RMA will use the Expense Exhibits provided by the approved insurance providers with their Plans of Operations. These Expense Exhibits are required to be audited and certified as to their completeness, accuracy and compliance with the SRA. Therefore, all costs to deliver the Federal crop insurance program should be included. Further, RMA has already provided instructions as to how they should be prepared and there are statutory accounting statements that have specific accounting rules for their preparation that can be used for verification of costs. Failure to comply with one of these requirements would not only jeopardize an approved insurance provider from participating in the premium reduction plan, it would jeopardize its ability to participate in the crop insurance program. In addition, RMA has devised a formula that will allocate costs in a consistent manner for all approved insurance providers for the purposes of determining the amount of any premium discount in a state.

Comment: An agent asked who was going to determine the efficiency.

Response: As stated above, RMA will determine whether there has been an efficiency for the reinsurance year based on the actual costs reported on the Expense Exhibits provided with the Plan of Operations. It will be relatively simple to compare a total of all of the costs reported as A&O costs with the amount of A&O subsidy received and to allocate costs across states.

Comment: Many agents, approved insurance providers, loss adjusters, and interested parties commented that RMA requires a certain level of service for the insureds. The commenters ask if RMA will require these standards for the premium reduction plan and how will this be audited. Commenters also ask if RMA has developed service standards for the premium reduction plan program and how RMA will audit to determine that the service provided under the premium reduction plan meets those standards. Commenters also asked if RMA can guarantee agents and insureds that the premium reduction plan is the way of the future and that quality and service will not be jeopardized. A commenter asked what RMA's plan of action is if those standards are not met and will more tax payer money be wasted trying to correct the situation.

Response: With respect to questions of the commenters regarding the service standard and the premium reduction plan, any approved insurance provider wanting to participate in the premium reduction plan must meet all requirements of the SRA and approved procedures with respect to service. This is the same requirement for approved insurance providers that elect to participate in the premium reduction plan and those that do not. Since this is a requirement of the current SRA, RMA already has the infrastructure in place to audit these service requirements and other SRA requirements through periodic approved insurance provider reviews. In addition, the interim rule also contains a mechanism to allow farmers to report to RMA if they believe they have received a reduction in service. If service requirements are not met by any approved insurance provider, then the SRA provides RMA with a range of actions it can take against an approved insurance provider, up to and including the withdrawal of authority to participate in the crop insurance program. The action that RMA would take would depend on the severity of the violation.

RMA cannot speculate, much less guarantee, as to whether the premium reduction plan is the way of the future. This is up to Congress and whether farmers and approved insurance providers embrace the concept. However, as long as section 508(e)(3) of the Act remains effective, the premium reduction plan will also be in effect.

Comment: An agent asked how RMA will monitor qualification for the premium reduction plan. The commenter claims the industry does not

need the negative results of approved insurance providers in financial disarray, especially when it gets to that place with the blessing of RMA.

Response: Under the alternative proposal, participation in the premium reduction plan should not adversely affect the financial stability of approved insurance providers because premium discounts are based on actual cost savings, not projected. Further, because the premium discount is no longer guaranteed in advance of a given year, approved insurance providers are in a better position to evaluate their financial condition to determine whether they are in any position to take cost saving measures and whether a premium discount should be paid. Lastly, RMA has added financial reporting requirements to the SRA and has enhanced financial analysis and monitoring of approved insurance providers that allow it to be a better gauge the financial position of approved insurance providers. Based on this knowledge, the interim rule allows RMA to deny the payment of a premium discount if it believes it will adversely affect the financial stability of an approved insurance provider.

Comment: An interested party commented that all approved insurance providers should be expected to conform to all guidelines regarding marketing, adjusting, compliance and reinsurance. This is the only way an agent or farmer can be guaranteed the ''Service'' FCIC is supposedly protecting and supervising.

Response: RMA agrees that all approved insurance providers are required to conform to all approved procedures regarding marketing, adjusting, compliance, and reinsurance. The interim rule reinforces this requirement for approved insurance providers that participate in the premium reduction plan.

Comment: An agent commented that RMA should have some type of competency requirement for anyone involved in the business. The commenter stated that for those who are only writing the coverage because it was easy to just make sure the client files his acreage reports every year so he can get on with selling life policies and promoting investment products, it may not be so easy anymore. The commenter stated that in the investment field, there are strict rules that dictate what and what not a broker or agent can sell as well as regulations trying to certify their competency to do any thing. These rules and policies are in effect to protect the consumer/client against unscrupulous individuals but most specifically to try and help protect their investments, their life saving and retirement nest eggs and their very livelihood. The commenter asks why the crop insurance field should be any different.

Response: While this comment is not directly applicable to the proposed rule, because the same requirements applicable under the SRA apply to the premium reduction plan, it is relevant. A crop insurance agent is subject to the licensing, reporting, and educational requirements of the state or states in which he or she operates. RMA agrees that some of these requirements vary widely between states. However, with respect to crop insurance, all agents are subject to the training requirements contained in the SRA and if RMA determines an agent is not competent to properly sell and service crop insurance, it can suspend or debar such agent. RMA agrees that standardizing state licensing and competency requirements would be preferable and has recently begun working with the states toward this goal.

Comment: An approved insurance provider commented that the first principle of requiring documentation to demonstrate ability to operate within expense reimbursement and to reduce costs below the expense reimbursement received from RMA is related to the second principle of requiring that claimed efficiencies be easily verifiable by RMA. Section 508(e)(3) of the Act requires premium discounts to be based on real efficiencies that reduce an approved insurance provider's costs below the RMA's expense reimbursement and that can be passed through to farmers. The commenter stated that allowing price reductions that cannot be documented or that exceed objectively demonstrable efficiencies likely will invite unfair competition by approved insurance providers seeking to undercut their competition with discounts that cannot be matched through savings. The commenter states that this abuse could threaten the approved insurance provider's solvency and also give rise to market disruption by directing farmers away from the more reputable providers.

Response: RMA agrees and shares the expressed concerns regarding the verification of cost efficiencies and the possibility for approved insurance providers to promise premium discounts that cannot be supported by actual savings. RMA elected to adopt the alternative proposal because of some of the very concerns raised by this commenter. Under the alternative proposal, because all premium discounts are based on actual cost savings determined at the end of the reinsurance year and the payment or amount is not guaranteed, many of the concerns raised have been rendered moot.

Comment: An interested party commented that there were no formal rules governing the marketing and distribution of the premium reduction plan and the appropriate procedures were the only way to ensure the fair delivery of crop insurance to all farmers regardless of size or resources.

Response: The interim rule now contains specific requirements regarding the marketing and distribution of premium discounts. These requirements include limitations on advertising, and marketing plans that use appropriate media to ensure that all farmers are made aware that the approved insurance provider has been determined eligible for the opportunity to offer a premium discount. Further, there are requirements regarding the distribution of premium discounts payment including the preclusion against placing conditions upon such payment like requiring renewal of the policy or having no loss for the crop year. Further, premium discounts in a state must be provided for all crops, coverage levels and plans of insurance. In addition, all farmers in the state insured with the approved insurance provider paying the premium discount must receive the discount and in the same percentage of net book premium.

Comment: An interested party commented that there are no controls in place to regulate false advertising or manipulation. This could result in inadequate or improper coverage, and jeopardize a total farming operation.

Response: RMA has added provisions to address these concerns. The interim rule now expressly contains provisions regarding advertising and contains limitations on the content of such advertising. The interim rule also contains provisions allowing consumer complaints regarding false advertising to be made directly to RMA. In addition, the interim rule allows RMA to take action against an approved insurance provider if the state determines that there has been false advertising.

Comment: An approved insurance provider commented that there must be better guidelines as to the extent of oversight and regulation by RMA.

Response: As stated more fully above, RMA has revised the rule to include better standards regarding the requirements of the program and the oversight of RMA, including those related to advertising, service, unfair discrimination, whether small, limited resource, women or minority farmers are not being given access to premium

discounts, calculating premium discounts, etc.

Comment: Many agents, loss adjusters, approved insurance providers and interested parties commented that the proposed rule does not include an enforcement mechanism that would prevent insurers from engaging in unfair discrimination by selecting only agents who primarily service large, low risk farmers to deliver their products. The commenters stated that RMA currently does not have the resources necessary to effectively police unfair discrimination against these farmers. Other commenters ask how RMA will police the unfair discrimination of approved insurance providers only selecting agents who primarily service large, low risk farmers. They also asked whether RMA has the resources to effectively police the unfair discrimination against these farmers. A commenter suggests that necessary cooperative oversight between FCIC/RMA and the state Departments of Insurance (DOIs) is imperative.

Response: As defined in the proposed rule, unfair discrimination occurs when an approved insurance provider refuses to provide a premium discount to any farmer because of the size of the operation or premium, loss history, etc. However, RMA also recognizes that there is a risk that approved insurance providers would select only agents that service, large low risk farmers, which happens regardless of whether the approved insurance provider participates in the premium reduction plan. To ensure equal access to the premium discount, RMA requires that approved insurance providers specifically market their participation in the premium reduction plan to small, limited resource, women and minority farmers through the appropriate media designed to reach such farmers. This marketing must be in addition to any solicitation done by the agent. Failure to comply with the marketing plan could subject the approved insurance provider to significant sanctions.

To enforce this requirement to market to small, limited resource, women and minority farmers, RMA will review the marketing plan and may compare the compositions of the approved insurance providers' books of business to determine whether there is a need for further investigation. In addition, provisions regarding consumer complaints have been added that would permit any farmer that thought it was excluded from receiving a premium discount to complain directly to RMA.

Since the preliminary steps to identify whether small, limited resource, women or minority farmers are not being given access to premium discounts can be done through data mining, the amount of resources to monitor this issue should not be great. Further, RMA currently has staff that is experienced in conducting such investigations regarding discrimination.

Comment: An interested party suggested more extensive reporting on marketing would need to be done to prevent cherry-picking, which may make the program prohibitively expensive to administer for RMA and the approved insurance providers.

Response: Competition for attractive accounts is not prohibited by the SRA or RMA procedures, but unfair discrimination is. There is no need for extensive reporting on marketing to police unfair discrimination. The 2005 SRA requires certain information regarding the minority status of farmers be collected and, reported and, as stated above, RMA may elect to compare the compositions of the approved insurance providers' books of business to determine whether there are any indications that small, limited resource, women or minority farmers are not being given access to premium discounts. This can be accomplished through analysis of the existing information contained RMA's databases. Therefore, the identification and prevention of unfair discrimination should not be cost prohibitive to RMA or the approved insurance providers. Further, as explained above, the interim rule provides a mechanism for policyholders and others to file direct consumer complaints to RMA.

Comment: Many agents and interested parties opposed implementation of the proposed rules until FCIC more effectively addresses the unfair discrimination concerns and RMA establishes a special enforcement office to address the issues that premium reduction plans raise for farmers.

Response: There is no need to create a special enforcement office. As stated above, the interim rule now provides RMA with the ability to effectively monitor and address any issues regarding unfair discrimination or whether small, limited resource, women or minority farmers are not being given access to premium discounts. In addition, RMA already has a Civil Rights office that is experienced in investigating such complaints.

Comment: Many agents and interested parties commented that RMA states ''it was easy to determine if practices were unfairly discriminatory because the approved insurance provider was required to offer the discount to all producers who wanted it.'' Commenters states that this is a very bold statement to make, similar to an approved insurance provider saying that it is easy to see if workplace discrimination is occurring because it is against the law. Just because it is outlawed doesn't mean that practices are going to be transparent, yet RMA is making that prediction here. RMA is making a broad generalization assuming that since discriminatory practices are not allowed, then either no one will do so or it will be easy to detect. Commenters state that this is impossible without an enforcement mechanism.

Response: In the proposed and interim rules, unfair discrimination is defined as denying a farmer a premium discount because of size, loss history, etc. Therefore, RMA was correct when it said that unfair discrimination would be easy to detect because RMA could examine the approved insurance provider's book of business to determine whether there was evidence of farmers systematically being denied a premium discount. However, as stated above, RMA is also concerned that all farmers have access to premium discounts. This is not as easy to detect but, as stated above, RMA has added provisions that would allow it to analyze the compositions of the approved insurance providers' books of business to determine whether there are any indications that small, limited resource, women or minority farmers are not be given access to premium discounts. Along with the establishment of a consumer complaint process and standards included in the interim rule, this enforcement mechanism will allow RMA to ensure that all farmers have access to premium discounts and apply appropriate sanctions to approved insurance providers that do not comply.

Comment: Several agents and loss adjusters commented that RMA does not currently have the assets to investigate more than a small percentage of alleged fraud and abuse instances let alone respond to greatly increased requirements of policing provider discrimination in selection of agents and locales, and ensuring that there is no discrimination against minorities and smaller, high risk farmers. A commenter stated that the primary focus of RMA should be in protecting program integrity. A commenter stated that RMA must be concerned that someone is going to commit fraud, waste or abuse of the premium reduction plan program.

Response: RMA does not accept the apparent implication of the commenter's assumption that RMA does not have the resources to properly deal with fraud, waste, and abuse. RMA investigates all allegations of fraud, waste, and abuse. The commenter may be referring to the large number of data

mining results that show anomalies in the program. The commenter is correct that RMA would not be able to investigate all anomalies indicated by data mining. However, RMA has refined the ability to determine when such anomalies are likely indicators of fraud, waste, or abuse and it investigates these cases.

Further, there is no basis to assume that RMA does not have resources to properly enforce discrimination provisions under the premium reduction plan. As explained above, there is a difference between discrimination and selecting only agents that have large, low risk farmers in their books of business. With respect to discrimination, RMA has the resources and ability to enforce all discrimination provisions of the crop insurance program, including those included in the interim rule. With respect to the selection of agents, RMA has included provisions in the interim rule that would allow it to determine whether approved insurance providers have taken such action and to require that approved insurance providers take remedial corrective measures. Much of the work would be done through data mining and responding to consumer complaints, both of which can be handled by existing knowledgeable and experienced RMA staff in collaboration with state regulatory officials.

RMA also disagrees with the commenter's unexplained and unsupported prediction that fraud, waste, and abuse will arise from the premium reduction plan. All current program integrity provisions of the crop insurance program will still apply to approved insurance providers participating in the premium reduction plan under the interim rule. RMA enforcement of these provisions will remain unchanged.

Comment: Several agents commented that RMA has very strict guidelines and rules requiring approved insurance providers to do more with less money all the time. The commenter asked how RMA will police this program to make sure it is administrated fairly to all insureds and agents, as it is now. A commenter asked if the approved insurance providers will be expected to police this too and where will the funds come from. A commenter stated that the premium reduction plan will increase the cost of RMA monitoring, which must be done fairly and accurately.

Response: RMA agrees with the comment that RMA expects approved insurance providers to abide by strict guidelines and rules and that RMA currently attempts to administer these fairly. RMA also agrees that additional requirements will be imposed on those approved insurance providers that choose to participate in the premium reduction plan under the interim rule. However, as stated above, the provisions in the interim rule will significantly reduce the burden over the requirements contained in the current procedures and the proposed rule. One means to accomplish this is to utilize information already provided to RMA, such as Expense Exhibits and policyholder information, to determine whether efficiencies are attained, the amount of premium discount and whether all farmers are being provided access to the premium discount. Another means is the formula to determine the amount of premium discount, which will standardize cost allocations and calculations across all approved insurance providers. Further, the requirements contained in the SRA will continue to apply to the premium reduction plan, such as those relating to service, training and loss adjustment. This allows for consistent monitoring and the ability to use existing resources.

Comment: A few agents and interested parties questioned whether having one training session at one location meets the qualifications of '' * * * training and oversight (must) not be compromised.'' The commenter states that most approved insurance providers conduct training sessions throughout the various areas to allow agents accessibility to these sessions. The commenter asked if an approved insurance provider gains ''efficiency'' by cutting back on the number of training sessions, but still has them, does it meet the requirement of the provision. A commenter states the premium reduction plan does not further the critical goal of ''up-to-date'' SRO relationships with RMA to foster a better program. A commenter asks RMA to scrutinize plans to assure that they continue to provide the necessary training for agents and adjustors that is so important for agents' continued education.

Response: RMA agrees with the commenter that agent and loss adjuster training is highly important in the ultimate servicing of policyholders and that participation in the premium reduction plan must be monitored with respect to the sufficiency of training. Under the SRA, every approved insurance provider is obligated to conduct training for loss adjusters and agents. Specific training requirements are contained in Appendix IV of the SRA and approved procedures. RMA monitors compliance with these requirements through approved insurance provider reviews and other methods. The interim rule makes it clear that approved insurance providers must continue to comply with these training requirements. The SRA identifies specific actions RMA can take if an approved insurance provider fails to meet these training requirements. Further, if the approved insurance provider participates in the premium reduction plan, sanctions authorized under the interim rule can also be applied.

With respect to the question asked by the commenter on the sufficiency of one training session at one location, RMA does not have the context in which the commenter asks the question and does not wish to speculate on what the context might be. If all the training requirements in the SRA can be accomplished in one training session, RMA could not preclude this action.

Comment: Several interested parties and approved insurance providers commented that RMA must closely monitor the program, including making sure such plans include a complete training program for agents who offer the premium reduction plan to farmers that is similar to current training requirements for all agents.

Response: As explained above, approved insurance providers must comply with the same training requirements as required under the SRA. Further, under the SRA, RMA will monitor the training to ensure compliance with all requirements.

Comment: An interested party commented that RMA has not complied with its own rules in requiring Crop1 to submit weekly accounting reports verifying their efficiencies and ability to operate under lower A & O contracts.

Response: RMA disagrees with the commenter. Two years ago, the FCIC Board directed that RMA receive from Crop1 weekly narrative and statistical reports, more detailed quarterly reports and that RMA conduct semiannual onsite reviews of Crop1. These requirements were to also apply to any other approved insurance provider that RMA might have approved to offer a premium reduction plan. Crop1 has complied with the directive regarding reports, as required by RMA. There were occasions during the annual crop cycle when RMA determined that there was minimal activity and excused Crop1 from this requirement until activity again warranted weekly reporting. Further, for 2003 and 2004, RMA has verified in each mid-year review that Crop1 was on target to achieve the projected cost efficiencies and verified at the end of each year that it achieved those efficiencies. This Board directive, reporting requirements, and the

procedures used to determine efficiencies will be replaced by the interim rule.

Comment: Many agents, farmers, approved insurance providers and interested parties commented that Crop1 is engaging in the type of discrimination that RMA purportedly opposes, and RMA is unaware of such activities, which indicates RMA's inability to conduct oversight or it is uninterested in doing so, which indicates an unwillingness to conduct oversight. A commenter states there is abundant anecdotal evidence that FCIC has lacked either the resources or the inclination to ensure that Crop1 conforms to the standards purportedly established by RMA. Commenters stated that if RMA can't or won't police its own activities for one small approved insurance provider, there can be no chance of policing the entire industry under the proposed rule. A commenter states RMA never determined that Crop1 met all the standards set by the Board.

Response: It is unclear what the commenters mean by discrimination that RMA purportedly opposes. The commenters do not provide supportive explanation or examples. As stated above, unfair discrimination is defined as denial of a premium discount based on the loss history or size of the farmer. However, it is possible that Crop1, or its agents, targeted its marketing to large, low risk farmers. This occurs throughout the crop insurance program and is not expressly prohibited in any procedures. This means Crop1 was permitted to operate in the same manner as all other approved insurance providers in delivering crop insurance. Therefore, it was not a matter of RMA electing not to enforce a program requirement, it was a situation where the complained of conduct was not in violation of any procedures.

As stated above, RMA recognizes that the program is premised on equal access to the crop insurance program and added provisions to the proposed rule, and revised and refined them in the interim rule, to specifically require that approved insurance providers market to small, limited resource, women, and minority farmers and if such marketing were inadequate, RMA can require remedial measures such as targeted marketing. All approved insurance providers electing to participate in the premium reduction plan, including Crop1, will be subject to the same requirements and scrutiny.

Comment: Many agents, farmers, approved insurance providers and interested parties commented that fraud and abuse are rampant. Commenters stated that Crop1 is going against all the rules of fairness and equality and stretching the law beyond limits. A commenter states that this failure to enforce the program requirements will likely destroy the crop insurance program as we know it, including some approved insurance providers and reinsurance sources.

Response: With respect to the allegation that fraud and abuse are rampant with Crop1, the commenter provides no support for this allegation. RMA's own data, and independent information from outside oversight bodies such as the Office of Inspector General, agree that fraud and abuse, while troubling in any amount, nevertheless represent a small fraction of all crop insurance business and Crop1 does not have a disproportionate amount of fraud or abuse. If anyone has specific information on fraud, abuse, or discrimination with respect to any approved insurance provider, RMA encourages such persons to bring this specific information to RMA's attention.

Further, RMA is stringently enforcing program requirements but it cannot enforce requirements that do not exist. That was one purpose of the decision to use rulemaking, to identify weaknesses in the current and proposed program so concerns could be adequately addressed. This process has worked, RMA has received many valuable comments and has addressed these in the interim rule.

Comment: Many agents, farmers, approved insurance providers and interested parties commented that if someone in the hearing process were to pursue the question vigorously, new and unwanted answers would undoubtedly surface and it definitely should be done by the committee. Commenters suggested that these problems combine to justify the indefinite extension or termination of the comment period and rulemaking procedure for the proposed rule.

Response: With respect to the comment that RMA should extend the comment period indefinitely or terminate rule making because of the allegations of these commenters, RMA notes that it is obligated under section 508(e)(3) of the Act to operate the premium reduction plan. Extending the comment period or terminating the interim rule would simply force RMA to operate the premium reduction plan under current or revised procedures, which the FCIC Board has already determined to be unsatisfactory or revised procedures.

Further, the purpose of this rulemaking process is to identify problems with the current program and create a rule that addresses these problems and protects the interests and integrity of the crop insurance program. Given the significant number of substantive comments received during the 60-day comment period for the proposed rule, it is apparent that the public including all interested parties had sufficient time to provide comments to identify problems and concerns. It is unlikely that an extension of the comment period would yield any additional comments or concerns that have not already been presented. Based on the comments received, the process has worked and the interim rule includes many significant changes that should provide a framework for a fair, sound, and stable premium reduction plan. Therefore, RMA does not find that there is a rational basis for extending the comment period.

Comment: An approved insurance provider commented that it had alerted RMA to misleading statements made by a Crop1 agent in conjunction with advertising of Crop1's premium discount plan and stated that but for its letter, RMA would have been unaware of these misrepresentations. The commenter asked how many other instances of false advertising have escaped the notice of RMA and if RMA cannot police the marketing practices of one approved insurance provider, how RMA proposes to monitor the conduct of seventeen approved insurance providers and thousands of sales agents.

Response: There is no way for any agency to monitor the activities of all participants in a program the size of the crop insurance program. There may be only a limited number of approved insurance providers but there are also thousands of agents and loss adjusters and hundred of thousands of farmers, FSA county committees and state insurance regulators.

RMA relies on a variety of ways to monitor approved insurance providers with respect to the SRA and the premium reduction plan. The commenter has highlighted one of the most valuable and powerful, the assistance of the crop insurance participants to report instances where there may be violations of the SRA, policy provisions or procedures. Even before the premium reduction plan was ever implemented, it was not uncommon for approved insurance providers or agents to report to RMA instances where competitors may be engaged in rebating or false advertising. The fact that RMA assessed the information it received from the commenter and took quick action demonstrates its willingness to enforce the premium reduction plan and SRA

requirements with Crop1. Further, because the crop insurance participants are in the best position to detect any wrongdoing, RMA has and will continue to rely on their assistance in identifying program violations. However, this does not mean that RMA is not continuously monitoring the conduct of the approved insurance providers. Finally, the interim rule added a mechanism for the receiving consumer complaints, which is another means for RMA to monitor the implementation of this rule.

Comment: A few agents commented that the agent contract with Crop1 is very restrictive and is really weighted to the approved insurance provider side. For instance, there is no commission paid until the farmer pays the premium. The commenter asked when RMA pays the approved insurance provider and does Crop1 get paid after the farmer pays the premium. The commenter also stated that the contract states that the agent can only write a discount plan with them and agents would be liable to Crop1 if they did not meet the RMA expense requirements, which they have no control over, and all this for a 20 to 40 percent decrease in commission revenue. Since they are the only approved insurance provider allowed to write a discount plan in 2005 it was not an issue. The commenter asked if RMA is aware that this is in Crop 1's contract.

Response: As explained above, the contract between an approved insurance provider and an agent is a voluntary arrangement and RMA does not regulate such contracts, including such terms as the timing of commission payments. As with all agent contracts, provided that there are no violations of the requirements of the SRA or approved procedures, agents and approved insurance providers are free to negotiate the terms of their contracts. Terms like exclusivity and paying the commission after the farmer pays the premium do not violate any requirement in the SRA or approved procedures. Therefore, RMA cannot prevent their inclusion in the agent contracts.

As stated above, the market will determine the appropriate terms and conditions in such contracts, including the timing and amount of commission payments. Approved insurance providers will always have the incentive to retain agents and their books of business because such business provides the potential for underwriting gain.

Comment: An interested party asked: (1) Why RMA rejected all other plans offered by other approved insurance providers and still kept Crop1's plan; (2) if RMA looks into the types of plans, coverage levels and size of farmers for all approved insurance providers, including Crop 1; (3) how RMA monitors compliance with the regulations and the Act; (4) how often approved insurance providers are penalized for not serving all farmers within a given state; (5) how many ''specialty crop'' policies does Crop1 write, such as tomatoes, apples, nurseries etc., and (6) how many small farmers are served by Crop1.

Response: There was never an intent to allow Crop1 to operate the only premium reduction plan. It happened that it was the first approved insurance provider to submit such a plan and the procedures were developed in response to the Crop1 submission, under the direction of the FCIC Board, and were designed to allow all approved insurance providers to make application. With respect to the premium reduction plans submitted by other approved insurance providers for the 2005 reinsurance year, RMA extensively reviewed each of the proposals individually under the procedures and determined they could not be approved because they did not meet the requirements. In notifying them of this fact, the approved insurance providers were provided with detailed information regarding the specific terms of the premium reduction plan and the procedures RMA determined the applications did not comply with. It should be noted that it took Crop1 over a year and multiple submissions to obtain the required approvals to begin offering its premium reduction plan. During the time its plan was under consideration, it went through a number of changes and reviews.

With respect to analysis of Approved insurance providers' books of business, RMA does routine analyses from its extensive data base. However, prior to the implementation of the premium reduction plan, such analysis did not focus on the types of plans, coverage levels of size of policies because, prior to the 2005 reinsurance year, the SRA only required that approved insurance providers sell insurance to all eligible farmers. The procedures only required that approved insurance providers not unfairly discriminate against farmers.

RMA did receive allegations that Crop1 was only marketing its premium reduction plan to large farmers. However, there was no specific requirement in the premium reduction plan procedures or the SRA that required approved insurance providers to market its products and services, including the premium reduction plan, to all farmers. Therefore, RMA could not hold Crop1 to a higher standard than other approved insurance providers. It was not until the 2005 SRA that RMA affirmatively required all approved insurance providers to market and sell crop insurance to all farmers. With the inclusion of this provision in the SRA, and the inclusion of this requirement in the interim rule, RMA will have to conduct such analysis. If it reveals that approved insurance providers are not in compliance with this requirement, RMA can take the appropriate action under the SRA or require remedial measures under the interim rule.

With respect to RMA monitoring, RMA engages in a variety of activities such as an extensive analysis of each approved insurance provider's Plan of Operations before the beginning of the reinsurance year; quarterly statutory financial reviews; periodic financial and operational reviews; compliance reviews; ad hoc investigations of specific operational issues; civil rights reviews, and indemnity estimates; just to name a few.

With respect to frequency of penalties for approved insurance providers not serving all farmers, RMA would view a refusal to provide insurance to an otherwise eligible farmer as a serious violation of the SRA and take the appropriate action. However, such occurrences are rare. With respect to the issue of marketing to all farmers, this requirement only became effective for the current reinsurance year and not all policies have been reported. Therefore, it is not yet possible for RMA to conduct a review.

With respect to the number of specialty crop and small farm policies carried by Crop1, such information is protected by the confidentiality provisions in the SRA and other privacy statutes. RMA can say that it has such information for all approved insurance providers in its extensive data base and periodically analyzes such data for approved insurance provider monitoring purposes.

Comment: A few agents and interested parties asked whether the approved insurance provider who has delivered premium reduction plan policies has been held to the same adjusting, education, and quality standards as the balance of the industry.

Response: All approved insurance providers that are eligible to participate in the premium reduction plan under the interim rule and those authorized under existing procedures, including Crop1, must first and foremost abide by the terms of the SRA. These are standard for all approved insurance providers. In addition, Crop1 must abide by additional terms and standards

established by the FCIC Board and by existing premium reduction plan procedures. These would include the service, training, loss adjustment, quality control, etc. requirements of the SRA and approved procedures.

c. Uniform Service and Unintended Effects

Comment: Several farmers and agents commented that with the current premium reduction plan there has been no reduction in benefits or service. Commenters state they are satisfied with the service they received from Crop1, its agents and loss adjusters. A commenter stated it received as good, if not better service than with other approved insurance providers. A commenter stated it was satisfied with the prompt accurate adjustment during the year when losses occurred due to drought. The commenter stated this not only strengthened Crop1's reputation but helped the agency to provide value and service as well. The commenter stated that every client has renewed their crop insurance since offering the premium discount.

Response: RMA has monitored service provided by Crop1 and all authorized approved insurance providers under the exactly the same standards, which are the requirements of the SRA and approved provisions, as all other approved insurance providers and has not found evidence that service to farmers was reduced. Further, such monitoring for compliance with the requirements of the SRA and approved procedures will continue under the interim rule. As stated above, provisions have been added to the interim rule clarifying these applicable standards.

Comment: An agent commented that whether the premium reduction plan is kept in place or not, it intends to continue providing the existing policyholders with the best service that it can. However, the commenter asks that RMA understand that the crop insurance program was designed for all farmers, not just large farmers, but the medium and small farmers.

Response: RMA hopes that all agents share the desire of this commenter to provide the best service possible to policyholders. Further, RMA is in total agreement that the premium reduction plan must provide access to all farmers in the states in which it is available. To accomplish this, RMA is requiring that approved insurance providers develop marketing plans designed to reach all farmers, including small, limited resource, women and minority farmers, through the appropriate media and implement the marketing plan. RMA will monitor performance and if it determines that any segment of farmers is not adequately being reached, it can require the approved insurance providers to take remedial corrective measures, including targeted advertising.

Comment: Many agents, interested parties, approved insurance providers, and farmers commented that the premium reduction plan will reduce services to farmers. Some reasons include stricter regulations, crop insurance is labor intensive, the inability to make changes to honest paperwork mistakes or keying errors by approved insurance providers or agents, and reductions in agent commissions. Commenters stated that their business is built on service. Commenters state that farmers need the assistance from their agents. A commenter stated that crop insurance is an increasingly complex subject and requires at least the level of service afforded now. A commenter stated that if approved insurance providers are cutting service then farmers will not buy the product. A commenter stated reduced service will mean poorer risk management decisions by farmers. A commenter stated that lesser service at a good price is not always a good bargain.

Response: RMA agrees that crop insurance is a complex, labor intensive program and that many farmers may need the expertise provided by the agents in selecting the best risk management tool for their operation. However, the service requirements under the SRA and approved procedures will not change and all approved insurance providers and agents are required to comply with these requirements irrespective of whether the agent or approved insurance provider participates in the premium reduction plan. Failure to comply with these requirements regarding service will not only subject approved insurance providers to sanctions under the SRA, it may subject agents and approved insurance providers to sanctions under the interim rule. Given the significance of the consequences, RMA does not believe there will be a reduction in service.

RMA understands that agents may be providing services over and above that which is required by the SRA and approved procedures. RMA does not require such extra service and cannot preclude a reduction in such services. This is strictly a matter between the agent and the farmer. As long as such service at least meets the requirements of the SRA and approved procedures, RMA will not interfere.

With respect to strict compliance with regulations, there are few additional requirements imposed on agents under the interim rule. The only significant requirement is the limitation on marketing practices in the promotion of premium discounts to existing and prospective policyholders. There should not be any additional paperwork burdens because premium discounts are now based on the actual cost savings achieved by the approved insurance provider.

Comment: Many agents, interested parties and farmers commented that reductions in service would be particularly true for small or limited resource farmers because they will be unprofitable to serve. Commenters stated small farmers require as much time, effort, and expense to service as large farmers. The commenters stated that if all of the larger accounts are switched to the discount plan, then agents will barely survive on the large accounts and will lose money on the smaller accounts, which they already do, meaning that overall they would be losing money and would have to go out of business due to a marketing scheme. The commenters state that they are able to serve small farmers partly because the larger farmers' policies help with the low or non-existent profits from the smaller farmers. A commenter stated that he or she could not still service areas with farmers in high loss ratios the way they deserve, if the premium reduction plan takes place. Commenters stated that these small farmers could be left without service.

Response: For the reasons stated above, it is unlikely that there will be any reduction in service to any farmer, including small or high risk farmers, from the requirements in the SRA and approved procedures. Approved insurance providers are not going to pay a commission so low that selling crop insurance is no longer economically viable for the agent and risk their going out of business. This would result in approved insurance providers not having sufficient agents to properly service their policyholders. In addition, approved insurance providers are not going to risk losing the agent or their book of business to a competitor thereby decreasing the potential for underwriting gains. The marketplace will determine the fair and equitable commission for the agent.

In addition, RMA has taken steps to ensure that service to small farmers is available and is not reduced. One step is to clarify the requirements regarding service in the interim rule. Another is to specifically require that approved insurance providers develop and implement a marketing plan designed to reach small, limited resource and

minority farmers. Provisions have also been added to allow farmers to complain directly to RMA if they feel they have been denied access to the premium reduction plan or have received reduced service. In addition, failure to comply with either the service or marketing requirements could result in the imposition of significant sanctions under the SRA or the interim rule on the approved insurance provider and agent.

Comment: An approved insurance provider commented that state variability could adversely affect the level of service to some farmers, which is directly contrary to the fundamental requirement of the crop insurance program that all farmers are entitled to the same level of service, regardless of their size or loss history.

Response: As stated above, service cannot be reduced below the level required by the SRA and the approved procedures. Further, as stated above, approved insurance providers and agents have a strong incentive to maintain at least the required level of service. Permitting state variability does not change these requirements. Further, as stated more fully below, after consideration of the comments regarding the inequity of creating a one size fits all program when the approved insurance providers have different business operations and may incur significantly different costs from one state to the next, the adoption of the alternative proposal which bases premium discounts on actual savings, the use of existing Expense Exhibits to determine efficiencies and the amount of a premium discount in a state, and the use of a formula to allocate costs and determine the amount of premium discount, there was no reason to refuse to permit state variability. However, this means that any approved insurance provider seeking state variability must do so while maintaining the required level of service.

In addition, the interim rule expressly contains provisions that preclude conditioning the payment or amount of a premium discount on the loss history or size of the farm. Violation of one of these requirements could also result in the imposition of significant sanctions under the interim rule.

Comment: Many agents, interested parties and farmers commented that if the premium reduction plan proposal stays intact as written, it would cause many of the personal services and consulting offered by the agent to not be available to the average farmer. Commenters stated that they meet several times each year with each farmer and reduced commissions would mean spending less time and a product that is now successful would again take a step backward with reduced time spent educating the farmer on risk management. Commenters state that the amount of work required increases each year. Commenters state that they need the ability to pay office expenses and do not deserve to have to attempt to continue to provide superior services at reduced compensation. A commenter stated that the amount of commission will not cover the amount of work. A commenter stated that crop insurance policies will take a back seat to other lines of insurance when the revenue generated decreases to a point that the investment of time is not feasible. Commenters stated that farmers do not mind paying if they get quality service. A commenter stated that the complexity of the program has increased the time spent servicing each client tenfold, leaving less time each year to solicit new accounts and new accounts that are necessary each time a commission reduction is passed down.

Response: As stated above, the SRA and approved procedures contain specific requirements regarding service and all approved insurance providers and agents must comply with these requirements or be subject to the sanctions in the SRA and interim rule. Therefore, it is unlikely that approved insurance providers will reduce commissions to the point that agents can no longer afford to comply with these requirements. Further, as stated above, it is not in the approved insurance provider best interest to cut commission to the point that agents stop selling crop insurance. As with all competition, the market will generally strike a balance with respect to the reductions in compensation the market can bear.

RMA understands that based on the comments there may be agents that are providing services in excess of those required. RMA also understands that some farmers find these services invaluable. However, since these services are not required by the SRA or approved procedures, RMA cannot require that they be maintained. This is a matter between the agent and the farmer. Further, the approved insurance provider may want to encourage such services in order to retain these farmers in its book of business. This would provide another incentive for approved insurance providers not to cut commissions to the point that agents cannot provide these additional services. RMA's obligation is to ensure that the requirements of the SRA and approved procedures regarding service are complied with and to sanction those agents or approved insurance providers out of compliance.

Comment: Many agents and farmers commented that when discounted pricing brings along with it discounted service, the farmer is not educated nor guided effectively through all his options. Commenters state that this program has become much more labor intensive, complex and convoluted by the addition of plans of insurance as well as more individual crop policies are offered and the premium reduction plan will cause reduced services. A commenter stated that the farmer needs the agent to assist them in making sound risk management decisions. Agents spend many hours keeping updated on changes. Commenters state that farmers want quality service. A commenter stated that the farmer relies on the agent to educate them. A commenter stated that there is barely enough time in the day to farm, to market, to keep records and to do everything else required to stay in business and that the premium discount is not worth losing the personal attention from the agent. Commenters state that farmers would be harmed without uninterrupted service.

Response: RMA agrees that farmers want quality service and that the agent's knowledge and experience is important to the success of the crop insurance program and the farmer. However, this does not mean there is no room for competition. It is the approved insurance providers that are in the best position to judge where efficiencies can be obtained without jeopardizing their compliance with the SRA and approved procedures or their book of business. Therefore, approved insurance providers are not likely to request the opportunity to offer a premium discount in states where it is not economically feasible to reduce agent commissions or other administrative costs. Further, approved insurance providers are likely to only propose cuts in commission that will still permit agents to receive a fair and equitable commission as determine by the agent and approved insurance provider. It is not in the approved insurance provider's best interest for the agent to lose customers because the agent can no longer serve its customers.

Comment: Many agents and farmers commented that given the complex, labor-intensive nature of crop insurance, any agent faced with a reduced commission will be forced to take on additional farmers to make up the difference, plus do all the other lines of insurance that they have to do just to stay in business. A commenter stated that in order for an agent to operate on less commission they would have to

gain new customers, which means taking clients from another agent. End result, someone gets hurt and it could lead to loss of integrity in the program. Commenters state that taking on new clients would reduce service because all of the marketing energy goes into generating the higher volumes.

Response: It is not uncommon for agents to want to expand their client base. Given that the number of potential new insureds is limited, agents typically attempt to attract clients from another agent. This occurred in the crop insurance program even before the implementation of any premium reduction plan. However, as stated above, it is unlikely that there will be the severe cuts in commission anticipated by the commenters because it is not in the approved insurance provider's best interest to lose agents or policyholders.

Further, what the commenters are describing is competition between agents and price will simply be a new component of that competition. However, as is currently occurring, service is still another means of competition and in some cases may be more valuable than the potential of a premium discount several years in the future. The premium discount simply provides another tool to be used by agents to attract clients and, under the alternative proposal adopted in the interim rule, one which is not so overwhelming that agents who provide superior service would not be able to compete on a level playing field.

Comment: An agent commented that self service insurance is a disaster waiting to happen for anyone who assumes that simply signing up will take care of business.

Response: There is no expectation that crop insurance will become self service. As stated above, agents provide too valuable a service to farmers and many farmers could not assess and meet their risk management needs without the assistance of the agent. However, as occurs in many aspects of life, there will be farmers that are more knowledgeable about crop insurance than others and may not need the same level of service to meet their risk management needs. As long as the service provided to all policyholders at least meets all the requirements of the SRA and approved procedures, any service provided above that level is totally within the discretion of the agent and approved insurance provider. This is true today and will remain true under the interim rule. As explained above, agents have always and will continue to compete based on the service they provide. It is the agent and approved insurance provider who are in the best position to know the level of assistance required by their customers.

Comment: Several agents and interested parties commented that they are concerned that a premium reduction plan environment will force approved insurance providers and agents to cut funding for training, support, and farmer education. Commenters state that the premium reduction plan will lead to less knowledgeable or qualified agents. A commenter states that this will erode the confidence in the crop insurance program. A commenter stated that RMA should not undervalue the knowledge, expertise and service the agent provides the farmer.

Response: All agents and approved insurance providers are still required to comply with all requirements of the SRA regarding training and the interim rule reinforces this position. Failure to comply with such requirements would subject the approved insurance provider to sanctions under the SRA. Therefore, participation in the premium reduction plan should have no effect on the knowledge or qualifications of agents.

With respect to support and farmer education, to the extent that reduction of these would lead to non-compliance with any service requirement in the SRA or approved procedures, such reduction would be prohibited and could lead to sanctions against the approved insurance provider. To the extent that the support and farmer education may not be required by the SRA or approved procedures, RMA cannot require that approved insurance providers continue these activities. However, as stated above, approved insurance providers have the incentive to retain customers and to the extent that such activities are needed for such retention, it is unlikely that approved insurance providers will cut them.

Comment: An agent commented that the small farmers will more than likely remain loyal to approved insurance providers and agencies that have done their very best to service their accounts over the years, such as developing record keeping systems, acreage mapping, educational updating, and constant reminders about proper reporting and compliance with the FCIC program. In general, the large farmers work on economies of scale and these farmers will be the accounts solicited.

Response: Large accounts were always the most attractive to solicit even before implementation of the premium reduction plan because they allowed the most opportunity for agents to profit. The implementation of the premium reduction plan does not change this dynamic. However, RMA believes that all farmers value superior service and are likely to remain loyal to the agent providing valuable service regardless of size. The addition of price competition simply gives the farmer a choice to decide what it values the most and, since the premium discount can no longer be guaranteed at the time of sale, the competition is on a more level playing field.

Comment: Several interested parties and agents commented that reductions in service and use of the internet will result in increased mistakes and misunderstandings. A commenter stated that farmers need personal contact with their agent to prevent these mistakes.

Response: As stated above, approved insurance providers and agents are required to comply with the service requirements in the SRA and approved procedures and such requirements, when followed, would preclude mistakes and misunderstandings. Therefore, because approved insurance providers would be subject to sanctions if service failed to meet the requirements, there should not be any increase in mistakes or misunderstandings under the premium reduction plan. Further, no approved insurance provider can sell and service insurance solely over the internet. The Act requires such sales to be made through licensed agents. Further, it is unlikely that an approved insurance provider could meet all the service requirements in the SRA and approved procedures remotely. Therefore, some personal contact between the agent and farmer is likely to occur.

Comment: An agent asks what exactly is service to the farmers. The commenter states that if RMA means, timely claims payment, make sure they get their bills, etc, the approved insurance providers will do this fine but unfortunately, that is not what the farmer considers good service. The farmer considers good service to be when his agent helps him decide the best coverage, when the agent reminds him that acreage and production reports are due and then looks it over to make sure it is not missing anything. The entire program has grown because there is a committed sales force of agents pushing the program. The approved insurance providers cannot and do not make sure that kind of service is taking place (except for captive agents). The best they can do is make sure agents are fulfilling the obligations of integrity, deadlines, and non-discrimination and they do a good job of that. But a commitment to servicing the farmer lies with the agent. Some do it well (and they grow their business) and others do not (and they lose the business to the

better agent). It is the agent/agency's responsibility to service the customer. That is how the farmer defines service.

Response: As stated above, service requirements are contained in the SRA and approved procedures. RMA agrees the service required by the SRA and approved procedures do not include the many personal touches that individual agents employ in the course of conducting business with clients. RMA further agrees that these factors can play a significant role in determining whether an agent is successful or not and that it is the agent that determines this level of service as a means to compete with other agents.

Nothing in the interim rule changes this dynamic. Agents provide a valuable service and farmers are the best judge of the service they want. This competition to retain or obtain new customers will still exist under the interim rule. However, a new component, price, has been added to the competition and agents will have to determine how best to compete because commenters are correct that some farmers will value the service more and others will value the premium discount.

Comment: Several agents commented that commissions are being reduced by a half or a third. Commenters state that if commissions were reduced only the amount of the discount the farmer received, it could still deliver the program with the same service. A commenter asked where the rest of the savings are going.

Response: There is no requirement in the interim rule that dictates that agent commissions be cut or the amount of commissions to be paid. This is a matter solely between the agent and the approved insurance provider. Market forces will determine if any cut in commission is appropriate and any amount because, as stated above, approved insurance providers have the incentive to retain agents and their books of business. Further, as stated above, RMA has made revisions to the premium reduction plan, such as the selection of states, which will provide the maximum flexibility for approved insurance providers to made sound, reasoned decisions regarding where they can achieve savings in their operations without jeopardizing their book of business and potential profitability.

RMA is not in a position to comment on the extent of the reductions in commission or where the savings are going. RMA only examines A&O costs and A&O subsidies to determine whether there is a savings. Further, there is no requirement in the premium reduction plan that all cuts in agent commission be used to fund the premium discount. If the approved insurance provider experiences higher costs in other parts of its operation, it may be using savings from the reduction in agent commissions or other efficiencies to offset such costs. This is totally within the discretion of the approved insurance provider.

Comment: An agent commented that in order to adequately serve all customers as they should be served, the reductions in cost of delivery should be made at the approved insurance provider level, not at the agent level.

Response: As stated above, the goal of the interim rule is to provide the approved insurance providers the maximum flexibility to evaluate their business operations to determine where savings can be achieved. The approved insurance providers are in the best position to determine whether agent commissions or other costs can be reduced while still maintaining their potential profitability. As stated above, this is a free market issue between the agent and the approved insurance provider because if commission cuts are too deep, agents are likely to move their books of business to competitors. Further, if RMA were to dictate the manner in which savings could be achieved, as suggested by the commenter, it could have a detrimental effect on the financial stability of the approved insurance provider because each has a different business operation, which means different areas where savings could be attained.

Further, as stated above, based on the information reported by the approved insurance providers on their Expense Exhibits provided with their Plans of Operation, agent commissions represent an overwhelming percentage of the total cost to the approved insurance provider to deliver crop insurance. To exclude the ability to use commissions to achieve savings even though the approved insurance provider has determined that this is the most appropriate place to achieve savings based on its evaluation of its operation would be arbitrary and capricious. However, the interim rule retains the requirement that approved insurance providers cannot achieve all of their cost savings from agent commissions. To participate in the premium reduction plan, approved insurance providers will have to achieve some savings from other aspects of their operations.

Comment: An agent commented that it is concerned that reductions in commissions will lead to fewer loss adjusters available to provide claims servicing.

Response: RMA is unsure of why a reduction in agent commissions will lead to fewer loss adjusters. Under the SRA, both functions are separate and distinct from one another. Further, under the interim rule, approved insurance providers must still comply with all the requirements of the SRA and approved procedures regarding loss adjustment. Failure to comply with these requirements will subject the approved insurance provider to sanctions under the SRA.

Comment: Several agents commented that RMA has stated that an agent cannot accompany a loss adjuster on a loss as they have in the past. A commenter stated that this goes against the whole principle of having an agent, which is service. A commenter asks whether the agent is considered part of the approved insurance provider and, therefore, can't cut any services that were provided in the past. The commenter stated that a large majority of the farmers don't understand the adjusting procedures and are being forced to rely on a stranger they just met and can only assume that adjuster is qualified to complete their loss instead of having someone they know and trust to be there to help them know they are being treated fairly. The commenter stated that many adjusters fill out papers and say sign here without explaining what they have done.

Response: These comments do not address a matter covered by this rulemaking and, therefore, were not considered relevant to the consideration of the proposed rule. However, this is an important issue that RMA would like to address.

The role of agents in the adjustment of claims is provided for in the SRA. For a number of years, the SRA has prohibited agents from being involved in the loss adjustment process. So this is not a new requirement and is necessary because in many cases of fraud, waste, and abuse, there has been collusion between the agents and loss adjusters. In addition, the concerns raised by commenters occurs in most lines of insurance, such as auto insurance, where if there is a claim, the insured works with the claims representative, who is usually a stranger and must assume that the stranger is qualified to complete their loss. Many persons are in the same position as the farmer in that they know little about the adjustment process. However, the need has been long been recognized to separate sales and loss adjustment because of the inherent conflict of interest in the position. Agents inherently want to keep their clients satisfied so they will remain with the

agent. However, loss adjusters work for the approved insurance provider, who has an interest in containing losses. Therefore, as with other lines of insurance, this provision is necessary to protect the integrity of the crop insurance program.

Comment: An agent commented that RMA should consider a premium modification philosophy that provides a savings where it can be applied without affecting customer service and it prevents applying a discount where it will reduce customer service.

Response: All approved insurance providers must provide the level of service required under the SRA and approved procedures. Since approved insurance providers and agents already compete based on the service they provide, it would be inappropriate for RMA to require as part of the interim rule that an approved insurance provider not be allowed to adjust the service provided so long as it meets the requirements of the SRA and approved procedures. RMA believes that decisions by approved insurance providers regarding the level of service beyond the minimum should be based on competition in the market. Which means policyholders will decide the level of service beyond the minimum approved insurance providers and agents must provide. To adopt the commenter's suggestions would require RMA to try to determine for policyholders the types and level of service that each approved insurance provider must provide regardless of its relationship to the requirements in the SRA and approved procedures. RMA does not believe that such regulation is in the policyholders' or the approved insurance providers' best interests.

Comment: Many agents and interested parties commented that it is unrealistic at best to expect to see true realized savings and efficiencies through the use of the internet. The commenters stated that the complex nature of crop insurance, coupled with recent history from the approved insurance provider currently offering the premium reduction plan having no success whatsoever with the internet as a delivery tool demonstrates this fact. A commenter stated that farmers do not have the time or equipment to input the data so agents must still do the work. Commenters state that the premium reduction plan provides an incentive to use the internet to the detriment of agents. Commenters state that farmers need the agents to assist them in making their risk management decisions.

Response: There is no requirement in the interim rule that cost savings must be attained through the internet. In fact, RMA agrees with the commenters that it is unlikely an approved insurance provider could comply with all the service requirements in the SRA or approved procedures if it offered crop insurance solely through the internet. However, the internet does provide a means where savings can be achieved and there are farmers who are willing and able to use the internet. Since the premium discount is now based on actual cost savings, not projected, approved insurance providers no longer have to mandate the use of the internet but could make it available and use any savings achieved to justify paying premium discounts.

Comment: Several agents, interested parties and farmers commented that if price is a factor, it seems to become the ''only'' factor when discussing a product. A commenter states that crop insurance is a valuable asset to any farming operation these days and does not need ''pricing games'' to become a factor. A commenter stated that agents should continue to provide coverage to policyholders based more on service and quality than cutting prices. A commenter stated that farmers don't go looking for the cheapest rate, they go looking for the person who can explain the program and offer the best service. The commenter stated that the premium reduction plan is going to make it where farmers look for the cheapest plan, and who cares if they know what they are buying. A commenter states that if the premium reduction plan proposal goes through, agents will water down their competitive advantage and have to resort to selling price. A commenter stated that others can be trendy and look to the bottom line but agents should be motivated by providing the best service they can.

Response: The commenters seem to suggest that competition on price and competition on service are mutually exclusive and that is unlikely to be the case. In a complex program where service is so important, it is unlikely that price competition, especially the kind included in the interim rule, would have the dominating effect on competition that commenters seem to suggest. The whole premise of price competition is to be able to provide the same product or service for less money. Therefore, farmers are still going to want the best risk management tool and advice they can get. If they find out they did not receive it from one agent, they will move on to another agent because of paramount concern to farmers is whether they receive the benefits they are contractually entitled to receive under the policy in a timely manner. The potential for a premium discount will not override this immediate interest. These market forces will always permit competition based on service.

Nothing in the interim rule is intended to minimize the role of the agent or change the service received. The interim rule is intended to allow price competition when and where the market will bear and the approved insurance providers, agents, and farmers are the best determinant of these factors.

Comment: Several agents commented that under the premium reduction plan, farmers suffer lack of service, access to all plans of insurance, and knowledge of the crop insurance program. A commenter states that only those farmers that can educate themselves will benefit. A commenter also stated that the access to the premium discount must be applied across the board to all types of policies and that farmers participating only in catastrophic risk protection (CAT) policies must be informed about the reduced premiums in other programs.

Response: All approved insurance providers must provide access to all plans of insurance under the terms of the SRA. The interim rule does not change this requirement. Further, the requirements for service are also contained in the SRA and approved procedures and all approved insurance providers and agents must comply with these requirements or risk sanctions under the SRA or interim rule. If the commenters know of instances where approved insurance providers or agents have not complied with these requirements, they should report such non-compliance to RMA.

Promoting certain insurance products is not the same as denying access to an insurance product. RMA has not regulated such promotion because generally the market forces take care of this issue. For instance, if an agent promotes a Group Risk Protection plan of insurance and the farmer later discovers that the indemnity payable under policy did not meet the farmer's risk management needs and that purchase of another product would have, the farmer is likely to go to another agent to obtain the coverage. Therefore, it is in the best interest of the agent to tailor the insurance coverage to best meet the needs of the farmer.

Regarding the statement that only farmers that can educate themselves will benefit, RMA expects that agents participating in the premium reduction plan will continue to be motivated to provide crop insurance education to farmers in order to remain competitive. Further, with respect to the requirement that agents inform their farmers of the

potential for a premium discount if it buys up, there is no need to specifically include this requirement in the rule. Agents already have an incentive to suggest to their farmers who purchase CAT coverage to buy higher coverages because of the higher commissions the agents can receive. The potential for a premium discount would provide an additional incentive the agent can use to convince the farmer to buy-up to higher coverage levels.

Comment: Several agents commented that there is currently a competitive marketplace with several approved insurance providers' agents still competing for new business based on service. If the government interferes with the marketplace to the degree that there are only one or two providers, the incentive to compete is lost and the level of service will certainly decline. A commenter stated that the system isn't broke now so why go out of the way to fix something that is working fine.

Response: There is nothing in the interim rule that suggests that implementation of the premium reduction plan will result in only one or two approved insurance providers. However, RMA has taken measures to minimize potential disruption to the marketplace. One is basing premium discounts on actual costs savings, instead of projections that may be unrealistic or unrealized. Further, the potential for a premium discount in the future will be much less disruptive to the market place than a guaranteed premium discount at the time of sale. Allowing approved insurance providers to select the states in which they will participate in the premium reduction plan also eliminates potential adverse effects in those states where margins are much less.

Under the interim rule, agents will still have the ability to compete on service. In a complex program, there will still be farmers that will value service more than the potential for a premium discount. Further, service is not likely to decline such that the requirements in the SRA and approved procedures are not met.

As stated above, RMA has no choice but to implement the premium reduction plan. However, it has tried to do so in a manner that maintains the best attributes of the crop insurance program, service and choice, and minimizes the potential for adverse effects, such as financial instability and approved insurance providers pulling out of states. As a result, RMA believes it has developed a premium reduction plan that can benefit all participants in the crop insurance program.

Comment: An agent commented that farmers who opt for a discounted plan should expect and receive some differentiation in service, to offset the cost savings, *i.e.* earn the discount. Example would be to complete the required reporting in some electronic format, which would speed up the process for the agent and approved insurance provider involved. The commenter also stated a discount may also make sense if the policy size were taken into consideration. The commenter stated that the time spent by an agent on farmer education, counseling, and processing can be just as involved for a 100 acre policy, as a policy for 1,000 acres. Consideration for the amount of insurance may be in order, and justify some further discount beyond the administrative fee alone.

Response: It is possible that farmers who participate in the premium reduction plan will not receive the same level of service as before. However, these farmers will still receive the level of service required by the SRA and approved procedures. Any service over and above that standard is strictly between the agent and the farmer. The interim rule does not require that extra service be eliminated.

Further, the amount of any premium discount takes into consideration the size of the policy. A farmer with a 1,000 acre policy would likely receive more dollars of premium discount than a farmer with a 100 acre policy because of the difference in premium. However, as the rule makes very clear, there can be no difference in the percentage of discount between the two if both farmers are located in the same state. To allow the application of different percentages of premium discount in the same state could lead to unfair discrimination. There could be different percentages of premium discount paid between states, *i.e.*, state variability. However, there is no unfair discrimination as long as all farmers within each state are treated the same. Such state variability may simply be a function of the differences in savings that can be achieved among the states.

Comment: Several agents and interested parties commented that although lower premiums would be beneficial to farmers, they question how approved insurance providers will be able to maintain their efficiency in servicing the customer. This in the long run will defeat the benefits of good crop insurance.

Response: As explained above, the interim rule requires that all farmers must still receive the level of service required by the SRA and approved procedures. Therefore, when determining whether an efficiency can be achieved, the approved insurance provider must evaluate its business operation to determine where savings are possible while still maintaining the required level of service and complying with the other requirements of the SRA. These requirements limit the actions of approved insurance providers and protect the integrity of the crop insurance program.

Comment: A few interested parties and agents commented that service centers would not be able to continue working with agencies because the approved insurance providers would have no ''room'' in their commission structure to offer enough for both a service center and the agent. The commenter stated it would drive many service centers out of business immediately. The commenter stated that service centers offer a valuable service to both agencies and approved insurance providers by acting as a buffer for the agent in turning in correct forms, information, etc. and reducing the workload of approved insurance providers. Without service centers, approved insurance providers would have to hire more underwriters at much more expense than a service center costs.

Response: There is nothing in the SRA or approved procedures that require approved insurance providers to use service centers. It is up to the approved insurance provider to determine whether or not to use service centers and how much to invest in such activities. Nothing in the interim rule changes this. While RMA does not doubt that service centers provide a valuable service, it is up to the approved insurance provider to evaluate its operation and decide where to achieve efficiencies. RMA has no rational basis to interfere with this relationship.

Comment: Several interested parties and agents commented that the proposed rule would cause an even greater burden on the approved insurance providers requiring vast accounting reports, particularly ones that are state specific. The A & O was just recently cut for the 2005 crop year and further cuts are not warranted. The commenters state that the proposed rule would require further commission cuts to agents in order for the approved insurance providers to comply with the premium reduction plan requirements at the same time that RMA continues to require more and more paperwork and contacts with its insured's.

Response: As stated above, RMA revised the proposed rule to require premium discounts to be paid on actual cost savings. Therefore, the accounting

reports necessary to determine the projected efficiencies have been eliminated. Actual costs savings must still be determined at the end of the reinsurance year but the proposed rule was revised to use existing Expense Exhibits provided with the Plan of Operations. Further, state accounting reports will not be necessary. RMA has developed a formula that will be used for each state to determine the premium discount. RMA has developed a formula that will be used for each state to determine the premium discount to the state level. Apart from the requirement to have these expense statements audited, there is no additional burden on approved insurance providers.

RMA disagrees with the comment ''that the proposed rule would require further commission cuts to agents * * *'' Participation in the premium reduction plan is voluntary for any approved insurance provider. If an approved insurance provider chooses to participate in the premium reduction plan, agent commission reductions are not required. Approved insurance providers are free to evaluate their operations to determine where cost savings can be achieved while still allowing them to be in compliance with all requirements of the SRA and approved procedures, including service, loss adjustment, training, etc.

Comment: Several agents and interested parties commented that many existing Crop1 agents are promoting only the Group Risk Income Protection (GRIP) product partially because it requires less work and expertise than individual products but also because its very structure causes claims to be overpaid. A commenter asked how much money could be saved if GRIP claims were not overpaid. A commenter stated such promotion may be to the detriment of the insured, who may be better served by an individual plan tailored to the farmer's risk management needs.

Response: It is impossible for RMA to determine the motives behind the promotion of one insurance product over another. However, the allegations by the commenter are not the first time such allegations have been made. Several years ago there were allegations that agents were promoting CRC to farmers who did not need that level of risk protection in order to increase their commissions. In these types of situations, it is impossible for RMA to determine the appropriate plan of insurance for a farmer or require that agents specifically promote certain insurance products or stop promoting another. As with the situation with CRC, agents should be advising farmers of the insurance product that best meets their risk management needs and if the agents are not, farmers will likely take their business to an agent that will.

Further, RMA is unsure of what the commenter means by the statement that GRIP by its very structure result in overpaid claims. If the commenter is referring to the fact that GRIP may pay an indemnity even if the farmer has not suffered a loss because the county suffered a loss, payment for this type of loss is specifically authorized by the Act. Further, the flip side is also true in that farmers with GRIP who suffer losses may not receive an indemnity because the county may not have suffered the requisite amount of loss.

Comment: Several agents and interested parties commented that Crop1 uses very deceptive marketing to try to convince people they will receive a 10% discount on their premiums. Commenters state that this is not the case for all levels of insurance coverage or plans of insurance. Commenters asked what happens in the event that the farmer would have a claim. The commenter stated the farmer already did not receive the discount he was expecting, and asked about the service. A commenter stated that farmers do not learn they have been misled until loss time.

Response: While such misunderstanding might have been possible under the process established in the proposed rule because approved insurance providers were required to project costs savings and such projections could be unreasonable or unattainable, the adoption of the alternative proposal precludes such conduct. Under the interim rule, premium discounts are based on actual cost savings determined after the end of the reinsurance year and all approved insurance providers and agents will be precluded from advertising that a premium discount will be paid or promising an actual or projected amount. Approved insurance providers will only be able to advertise actual premium discounts paid and even these must be accompanied by prominent disclaimers that past results do not guarantee future payments. If RMA discovers that an approved insurance provider or agent is not complying with these limitations, sanctions will be imposed.

Regarding the comment about farmers being led astray about the premium discounts, RMA has investigated several cases where local marketing information from Crop1 and its agents, though not conclusively false, could be perceived by some farmers as misleading. In such cases, RMA directed Crop1 to cease and desist and Crop1 complied. RMA has no evidence that widespread false or misleading marketing information about Crop1's premium reduction plan was disseminated. Any person with specific information coming from Crop1 or any other approved insurance provider that is false or misleading is encouraged to provide such information to RMA and RMA will take appropriate action.

Comment: Several agents and interested parties commented that Crop1 does not have an adequate number of loss adjusters. A commenter asked that if Crop1 did decide to hire more adjustors where they could find ones with enough experience to handle such a large number of losses in a short amount of time. A commenter stated that Crop1 is trying to hire loss adjusters that from other approved insurance providers who have already gone to great expense to train them. A commenter stated that Crop1's adjuster force is small. A commenter stated that Crop1 has an advantage of no training for agents or loss adjusters.

Response: Regarding the comment alleging that Crop1 lacks loss adjusters, Crop1 has advised RMA that, like nearly every other approved insurance provider, it employs a combination of salaried loss adjusters, contracted loss adjusters on retainer, and extra contracted loss adjusters when needed. RMA has no evidence that Crop1's claims service is inferior to other approved insurance providers and has not received any more complaints from farmers regarding Crop1's loss adjustment than it received about the loss adjustment of other similarly sized approved insurance providers.

Regarding the comments alleging a lack of training of Crop1 agents and loss adjusters, the SRA and Appendix IV contain the requirements regarding training and all approved insurance providers are required to be in compliance with these requirements or face sanctions under the SRA. RMA monitors the training of all agents and loss adjusters and, through its monitoring activities, RMA has documented training logs and materials that confirm that Crop1 conducts training activities for agents and loss adjusters that are in compliance with the requirements of the SRA and Appendix IV.

Comment: Several agents commented that the premium reduction plan approved insurance provider is seeking people who are not professional agents, such as seed dealers and elevators, and have not worked and know very little about the realm of crop insurance and that this was unfair. A commenter stated the agents were new and inexperienced.

A commenter claims that one of the people involved with the premium reduction plan program stated he knew very little about crop insurance, but his job was to sign up ''agents'' willing to sell this type of insurance. A commenter claims their selling pitch has nothing to do with the integrity of the crop insurance program nor the service and hard work that goes with the professional standard of most MPCI agents, but only with the fact that ''we can save you 10% on premium.'' A commenter states that because of these unprofessional people involved with the premium reduction plan program, all agents who have worked so hard to improve the program over the years are now going to suffer because of these few bad apples. A commenter states that farmers will suffer by not getting quality service. A commenter asked how RMA can expect a Crop1 insured, a coop employee, or a seed dealer to perform policy underwriting with absolutely no experience or training in crop insurance.

Response: Regarding the general comments that Crop1 has relied heavily on people who are not professional agents, such as seed dealers, etc., Crop1 is required to comply with the same requirements in the SRA and approved procedures as all other approved insurance providers regarding the licensing and training of agents and service provided to farmers. RMA has monitored Crop1's sales activities and has not discovered that is in violation of any of these requirements. While Crop1 may use persons such as seed dealers to sell crop insurance, these persons are licensed and trained agents.

Further, there is nothing in the SRA that precludes the use of inexperienced, trained and licensed agents. New agents are constantly entering the crop insurance program and there is no basis to exclude their participation. Inexperienced does not mean unprofessional and it is up to the approved insurance provider to make sure these new agents gain the experience to go along with their training. Further, inexperienced does not mean that agents cannot determine the risk management needs of the client and properly advise them of the insurance product that will meet that need. No agents are authorized to sell insurance until they receive this training.

Further, the fact that agents are selling insurance based on ''price'' competition instead of service is also not precluded. As stated above, the whole purpose of section 508(e)(3) of the Act was to introduce price competition into the program. Further, as commenters have stated, there will be farmers that will value premium discounts over service and those that do not. This allows for a balanced competition.

Crop1 is in the business to make money and as such, it will ensure it has the proper personnel to conduct underwriting, sell insurance, and conduct loss adjustment. Further, under the interim rule, Crop1 will operate under the same requirements as all other approved insurance providers. The market will determine whether Crop1 can successfully compete with its alleged inexperienced personnel and agents.

Comment: An agent commented that Crop1's agents were bragging that it only took two days to become certified or eligible to sell its products and asked where the due diligence was and why Crop1 did not have to follow the same rules.

Response: All approved insurance providers are required to comply with the same licensing and training requirements contained in the SRA and approved procedures. As stated above, RMA has monitored Crop1 and has found no violation of these requirements. If the commenter knows of such a violation, it should report it to RMA.

Comment: An agent commented that any indication of savings from loss adjustment expenses should cause great concern for RMA and asked how one reduces costs for loss adjustment without reducing service to farmers.

Response: RMA reiterates that the loss adjustment process is separate and distinct from the service provided by agents as required by the SRA. Further, all approved insurance providers are still required to comply with all the loss adjustment requirements in the SRA and approved procedures, regardless of whether they elect to participate in the premium reduction plan. However, this does not mean that loss adjustment expenses cannot be reduced. RMA has been offering a Simplified Claims Process, that is intended to reduce the burden on approved insurance providers and use of such claims process could result in savings. However, given the importance of the claims process to the financial welfare of the crop insurance program, RMA will carefully scrutinize situations where there has been a reduction in loss adjustment expenses to ensure that such reduction does not violate the loss adjustment requirements of the SRA and approved procedures.

Comment: Several agents commented that if anyone has purchased a policy through Crop 1 they have problems getting hold of anyone to answer questions in regards to their policies and are constantly calling and coming into its office to get the answers to their questions. A commenter asked if this is another one of their efficiencies. The commenter states that Crop1 will write the business but they are not around to service it and let other approved insurance provider's agents do the work for them.

Response: Without additional information, RMA cannot determine whether the service requirements in the SRA and approved procedures have been violated. However, if farmers are not satisfied with the service they are receiving, they can complain to RMA or move their business to another agent. This is the free market choice of farmers. Further, this situation would appear to provide a great marketing opportunity for the commenters because they can point out the benefits of continuous access over possible price discounts. This is one of the purposes of the program so that farmers could determine which they value most. Finally, the interim rule provides a new process to allow farmers with complaints to directly report these complaints to RMA.

Comment: An agent commented that approved insurance providers will divide their book of business into additional corporate entities if there is a competitive advantage. Such division could allow the manipulation of the SRA. The commenter stated that this will also create a significant challenge to verify savings as it will allow the potential to shift cost allocations between the entities.

Response: RMA shares the concerns of the commenter—that an approved insurance provider could potentially divide a book, create opportunities to manipulate allocated costs and, thereby, abuse the premium reduction plan. However, to do so, the approved insurance provider must create two separate and distinct entities and both entities would have to independently qualify for a SRA because RMA does not permit an approved insurance provider or its managing general agent to operate under multiple SRAs.

Further, the use of the Expense Exhibits provided with the Plan of Operations and the formula to determine the premium discount would mitigate any potential manipulation of costs. However, now that approved insurance providers have the flexibility to select the states in which to participate in the premium reduction plan, can elect whether to pay a premium discount in a state, and can vary the amount of premium discounts between states, there is much less

incentive for approved insurance providers to divide their books of business.

3. Discrimination

In the preamble to the proposed rule, RMA stated that one of the principles that must be met to comply with the requirements of section 508(e)(3) of the Act is that no premium reduction plan can unfairly discriminate against farmers based on their loss history, size of operation, or the amount of premium generated. RMA has tried to address this issue in the proposed rule by: (1) Requiring that the premium reduction plan be provided to all farmers insured by the approved insurance provider; (2) requiring approved insurance providers to provide marketing plans for how they will reach these farmers; (3) denying approval for premium reduction plans with inadequate marketing plans; and (4) allowing for withdrawal of approval by RMA for failure of the approved insurance provider to follow the marketing plan. RMA sought comments on whether these provisions should be modified or additional provisions added to ensure that all farmers have access to all premium reduction plans offered in their state. The comments received and FCIC's responses are as follows:

a. General

Comment: An interested party commented that if an approved insurance provider is to offer a premium reduction plan, they should be able to choose who they offer it to. The commenter states that with the wide variety of management skills of today's farmers, why offer a premium discount to someone who claims a loss every year. The commenter asks if they are truly worthy of having their premium reduced and why should a well managed farm pay the same amount of premium as one that is poorly organized. The commenter suggests that an insured should demonstrate that it is a better risk than a neighbor, and deserving of a premium discount.

Response: Under section 508(e)(3) of the Act, premium discounts are based on whether the approved insurance provider can reduce costs under the amount of A&O subsidy that is paid by RMA under the SRA. There are no other criteria stated in the Act and there is no rational basis to adopt the criteria proposed by the commenter. If RMA were to permit approved insurance providers to select which farmers receive the premium discount based on whether they have a loss, it would permit the very discrimination that RMA is trying to avoid.

Further, well managed farms already do not pay the same premium as a poorly managed farm. Premium rates are based on the risk of loss and the risk of loss would be greater with a poorly managed farm so more premium would be required to cover these losses. Therefore, the requested change has not been made.

Comment: An approved insurance provider commented that approved insurance providers who apply and receive approval to offer a premium reduction plan should be required to offer the savings to all their farmers and that in advance of making the offering, the approved insurance provider should be required to prove within their marketing plan how they expect to reach these farmers. Thus, the commenter states it is supportive of the fourth principle, non-discrimination, and would be addressed by: (1) Requiring premium reduction plans to be provided to all farmers insured by the approved insurance provider, (2) requiring the submission of marketing plans to show how the approved insurance provider will reach small and limited resource, women and minority farmers; (3) denying approval of premium reduction plans not supported by an adequate marketing plan, and (4) allowing for the withdrawal of approval of a premium reduction plan for failure to implement the approved marketing plan.

Response: RMA understands the basis for the commenter's position that approved insurance providers participating in the premium reduction plan should be required to offer premium reductions to all producers. This principle was the basis for provisions in the proposed rule. However, as stated above, RMA, after reviewing the comments, has concluded that this position would give a significant competitive advantage to small or regional approved insurance providers that may not write in states with marginal or high loss ratios.

RMA believes that approved insurance providers would withdraw from certain states if they are required to provide a premium discount to all policyholders. Given the higher costs associated with such states and the difficulty or impossibility that approved insurance providers could reduce costs sufficiently to offer a premium discount, an unintended consequence of the proposed rule was that farmers in some states would be left without any approved insurance provider to offer insurance because RMA cannot require approved insurance providers to do business in any particular state. The harm that such withdrawal would cause to the program and the economic stability of farmers far outweighs the possibility that farmers in some states may not be offered premium discounts. For this reason, RMA is permitting approved insurance providers to select those states in which it will participate in the premium reduction plan. However, if an approved insurance provider selects a state to participate in the premium reduction plan and is approved by RMA to provide a premium discount, all policyholders of the approved insurance provider in the state will receive the same percentage of premium discount.

Further, to ensure that small, minority, limited resource, etc. farmers are aware of the availability of a premium reduction plan in a state, the marketing plan provisions have been clarified to require approved insurance providers to more clearly specify how they will be marketing and that the marketing under the marketing plan is in addition to any marketing that may be done by agents. This should ensure that all farmers have equal access to the premium discounts.

Comment: Many agents and interested parties commented that they were opposed to the premium reduction plan will because it will lead to discrimination. Commenters stated that wholesale ''cherry picking'' will take place in the market. A commenter stated that discrimination will be impossible for RMA to control. Commenters states that the premium reduction plan will lead to discriminatory underwriting. A commenter states the premium reduction plan will lead to adverse selection and abuse. A commenter states that its members are 99% opposed to the premium reduction plan product because of discrimination issues. Commenters state that allowing cherry picking is not fair to the farmer or the integrity of the crop insurance delivery system

Response: As stated above, there is a difference between selecting agents that solicit the most potentially profitable policyholders and denying insurance or a premium discount because of the policy size, loss history, etc. The latter is considered unfair discrimination and is prohibited in the interim rule. However, the former is not precluded under the SRA or the interim rule. Agents are currently trying to assemble the most profitable book of business that they can. However, while agents may solicit large farmers, they cannot deny insurance to any other farmer, including small, limited resource, women and minority farmers.

However, to ensure that all farmers know about and have access to the

premium reduction plan, approved insurance providers will be required to design and implement marketing plans to reach all farmers, including small, limited resource, women and minority farmers. One way RMA can use to determine whether all farmers have been provided access to the premium discount is to compare the composition of one approved insurance provider's book of business with another. If RMA determines that the marketing plan is not adequately reaching such farmers, RMA can require remedial measures or impose sanctions under the interim rule.

Comment: Several agents commented that the previous premium reduction plan had farmers entering data over the internet to afford a premium discount because of ''administrative'' efficiencies. Commenter states there is a potential to discriminate against many farmers who are not technically literate and those who could not afford technology to take advantage of the discount.

Response: The commenter may be referring to inaccurate accounts of the previously approved premium reduction plan that would restrict premium discounts to only those farmers who applied for insurance through the internet. The premium reduction plan approved by RMA included opportunities for farmers to use the internet, but never proposed restricting premium discounts to those farmers that used the internet.

Further, costs savings are not determined on a farmer-by-farmer basis. As discussed above, since approved insurance providers can now select the states in which to participate in the premium reduction plan, under the interim rule, cost savings for an approved insurance provider are determined on a state basis. Further, to preclude any discrimination against farmers in a selected state, if an approved insurance provider is approved to pay a premium discount, the same percentage amount of premium discount must be paid to all policyholders of the approved insurance provider in the state. This means the percentage of premium discount may vary between states but it must be the same within each state. Therefore, if an approved insurance provider requested approval of a premium discount based on savings attained through the internet and only intended to pay the discount to farmers that used the internet, RMA would have to disapprove the payment of such discount under the interim rule.

Comment: Several agents and interested parties asked whether anyone thought about the fact that if agents have a discount plan and every crop insurance agency/agent signs up for it, all of the customers would have to be switched to the discount plan or face discrimination—not only legally but ethically and morally as well. An agent with a discount plan available would have no choice but to move every single customer to the discount plan. Commenters stated that being able to offer the premium reduction plan to one farmer and a regular plan to another takes on a discriminatory appearance.

Response: First, there is no signup for farmers under the premium reduction plan. If the approved insurance provider attains an efficiency and elects to pay a premium discount the farmers will receive the premium discount payment from the approved insurance provider. Second, as stated above, the premium reduction plan no longer must be available in all states in which the approved insurance provider does business. Approved insurance providers will select the states in which they will participate in the premium reduction plan. However, RMA agrees that once an approved insurance provider elects to offer a premium discount in a state, allowing approved insurance providers to offer the premium discount to some farmers in the state and not to others could result in unfair discrimination. For this reason, the interim rule requires that an approved insurance provider authorized to offer premium discounts, and its affiliated agents, must automatically apply the same percentage premium discount to all of its policyholders in the state.

However, there may be situations where the agent is writing for more than one approved insurance provider, some of whom may not be participating in the premium reduction plan or not participating in that state. There is no requirement in section 508(e)(3) of the Act, the SRA, or the interim rule that the agent sign up all its customers with the approved insurance provider that participates in the premium discount plan. However, as stated above, the interim rule now contains provisions that require the agent to inform all its customers of the approved insurance providers the agent writes for that participate in the premium discount plan. This will allow farmers to make informed decisions regarding their insurance.

Comment: An interested party agrees absolutely that the premium reduction plan must be provided to all farmers as a minimal standard since it reduces the opportunity for inequitable treatment.

Response: RMA agrees in part with the commenter that a premium discount must be provided to all producers. However, as stated above, RMA has to balance the impact of approved insurance providers withdrawing their business from a state with the impact that farmers in a state may not receive a premium discount. RMA has determined that the potential for no crop insurance to be available in the state is more harmful than the lack of a potential premium discount. The most important consideration is that farmers have access to the risk management products they need. However, RMA agrees that once the approved insurance provider elects to offer a premium discount in a state, all farmers insuring with the approved insurance provider must receive the same percentage of premium discount.

Comment: An approved insurance provider commented that the premium reduction plan will cause insurance companies to cater only to large farmers because premiums in 2005 will drop due to lower commodity prices which, in turn, will reduce the amount of A&O received, even though an approved insurance provider's costs are rising.

Response: The incentive to cater to large farmers exists in the current program, apart from any feature of the premium reduction plan. However, the interim rule helps to create meaningful program opportunities for smaller farmers by requiring that approved insurance providers eligible to offer premium discounts implement marketing plans that specifically targets such farmers. This affirmative step helps to offset the natural tendency of approved insurance providers and their agents to seek only the business of larger farmers. Further, RMA will monitor such marketing plans to ensure that they are effectively reaching the small, limited resource, women and minority farmers and require remedial measures or impose sanctions where appropriate.

Comment: Several agents and interested parties commented that there is nothing in the proposed rule to prevent an approved insurance provider from advertising a premium reduction plan only to large farmers through direct mail telling past customers that they are offering a discount and they are the only agent they can get the discount from.

Response: The interim rule precludes this behavior in two ways. First, as stated above, advertising and promotion is significantly curtailed. No agent or approved insurance provider can advertise or promote the availability or amount of a premium discount. Advertising and promotion is limited to the past premium discounts that have been paid and even they must be accompanied by prominent disclaimers. Second, as stated above, the interim rule requires approved insurance providers

to design and implement a marketing plan that will specifically target small, limited resource, women and minority farmers. RMA would take remedial action or sanction any approved insurance provider that attempted to solicit only large or prospectively profitable farmers. Further, as stated above, all agents must now inform their customers of all the approved insurance providers they write for that are participating in the premium reduction plan in the state. This will reduce the chance of any agent representing that it is the only agent the farmer can get a premium discount through.

Comment: Several agents, approved insurance providers, and interested parties commented there is nothing keeping an agent from selling the discount plan from one approved insurance provider and the regular plan from another. Agents will be able to pick and choose who they write with for given farmers. A commenter states that this may lead to market conduct issues regarding the farmers' access to the best deal that the approved insurance providers, states and RMA will not be able to police or monitor. A commenter stated that the agent recommends placing a policy with a given approved insurance provider and the farmer almost always goes along. It is a homogeneous product and the farmer trusts his agent to tell him which approved insurance provider will offer him the best service on timely claims adjustment and payment. The farmer chooses his agent and the agent chooses the approved insurance provider.

Response: RMA acknowledges there may be an issue when an agent writes for both an approved insurance provider that offers the premium reduction plan and one that does not. There is nothing in the SRA that would require an agent to inform a farmer of the products offered by a competing approved insurance provider with whom it writes. RMA acknowledges that an agent that represents both an approved insurance provider eligible to participate in the premium reduction plan and an approved insurance provider that does not can strongly influence which approved insurance providers to promote among his or her existing or prospective policyholders. Further, the approved insurance provider recommended to the policyholder by the agent might reflect compensation or other benefits to the agent rather than what might be in the policyholder's best interest. RMA is concerned that the misuse of such influence by agents could result in certain farmers not having an equal opportunity to participate in the premium reduction plan. To mitigate the situation, RMA requires the approved insurance provider to develop and implement the marketing plan separate from the solicitation done by agents. This way all farmers regardless of size should be informed of the availability of the premium reduction plan in their state. Further, RMA is requiring that all agents to disclose to all farmers the list of all approved insurance providers with which they write that are participating in the premium reduction plan. This, coupled with the marketing campaigns of the approved insurance providers who participate in the premium reduction plan, will allow farmers to make informed decisions.

With respect to the policing of such conduct, RMA will be monitoring the situation and will also rely on state regulators, who have extensive experience in regulating market conduct by agents.

Comment: A few agents commented that the crop insurance program (before the premium reduction plan) was easier to promote and keep other agents honest because the agent could tell the customer that the base multi-peril federal subsidized program was the same cost no matter which agent or approved insurance provider they buy it from. The commenter asked how to police that problem in the future other than to make the premium all the same. The commenter said this could lead to accusations of ''bid rigging.''

Response: With respect to changes resulting from the premium reduction plan, RMA would agree that the premium reduction plan may require that agents adjust their marketing methods from those based on the premise that a policyholder pays the same premium regardless of approved insurance provider. Further, RMA shares the concern of the commenter that these changes could pose problems such as misrepresentations of premium discounts by agents. However, provisions have been specifically added to the interim rule that severely limit the advertising or promotion of a premium discount. Approved insurance providers can only advertise actual historical premium discounts and they still must be accompanied by a prominent disclaimer, either contained in the interim rule or approved by RMA.

RMA cannot consider the commenters suggestions of making premium discounts the same for all approved insurance providers because section 508(e)(3) of the Act is very specific that such discounts must be based on the savings achieved by the approved insurance providers are not all approved insurance providers will be able to achieve savings in all states or achieve the same amount of savings.

With respect to policing of the situation, as stated above, promotions and advertising alleged to be discriminatory will be reviewed by RMA and state regulators and corrective actions required. The marketing concerns raised by the premium reduction plan are similar to other market conduct issues that insurance regulators regularly face especially with respect to the marketing of insurance plans by mutual and other similar types of approved insurance providers that offer payments to policyholders similar to the premium discount. While RMA shares the concerns of the commenter, RMA believes that these concerns can be addressed through cooperation between RMA and state insurance regulators.

Comment: Several interested parties commented that they oppose implementation of the premium reduction plan, which opens the door to discrimination and significant program risks because the opportunity for all farmers to obtain coverage with a premium discount, is simply not available, either by state, crop, or approved insurance provider. The commenter states that RMA is assuming that all approved insurance providers will apply for and be approved to offer the premium reduction plan. But since only one approved insurance provider has been approved to offer this type of coverage, a large portion of the farming segment is left without the availability to purchase this coverage, which is itself discriminatory. The commenter also stated that no one or two approved insurance providers could currently handle this volume of business.

Response: The commenter suggests that since only one approved insurance provider, with a relatively small client base, is currently authorized to offer premium discounts, that RMA is discriminating against the relatively large segment of policyholders that do not have the opportunity to receive premium discounts. The commenter further implies that RMA is discriminating if it does not approve enough approved insurance providers with sufficient capacity to be able to provide premium discounts to every crop insurance policyholder. The commenters are incorrect.

Participation in the premium reduction plan is strictly voluntary. Further, RMA is obligated to comply with section 508(e)(3) of the Act, which requires approved insurance providers be able to deliver crop insurance for less than the A&O subsidy received to qualify to pay a premium discount.

There never was, nor could there be, a guarantee that all approved insurance providers would request to participate in the premium reduction plan or they would qualify.

The fact that not all approved insurance providers may participate in the premium reduction plan or, as stated above, RMA has elected to permit approved insurance providers to elect which states in which they will participate, does not mean that farmers have been unfairly discriminated against. By definition, unfair discrimination occurs when an approved insurance provider elects to offer the premium discount to certain farmers and elects not to provide it to others when the premium reduction plan is available based on factors such as policy size or loss history.

Within each state the approved insurance provider elects to participate in the premium reduction plan, all farmers in that state will have equal access to the premium discount and to ensure that all farmers are informed about the opportunity to receive a premium discount, approved insurance providers must implement a marketing plan that specifically targets small, limited resource, women, and minority producers. Further, as stated above, all agents must identify all approved insurance providers for which they write that participate in the premium reduction plan. These measures should ensure equal access to premium discounts in a state and if they are not effective, RMA has the authority to require other remedial measures or impose sanctions.

Finally, RMA has attempted to simplify the process for approved insurance providers to request to participate in the premium reduction plan. Based on these changes, coupled with the strong interest by most of the approved insurance providers to participate in the premium reduction plan for the 2005 reinsurance year, RMA believes that the premium reduction plan will be available to an increasing number of farmers over time.

Comment: Many approved insurance providers, agents and farmers commented that the premium reduction plans do not support the objective of preventing unfair discrimination. A commenter stated that the reductions in A&O already eliminate any broad based business opportunity for approved insurance providers or agents to offer further reductions in premium. Commenters stated the premium reduction plan is inherently discriminatory particularly based on what has been implemented to date and what is proposed in the new rules.

Response: If the commenters are correct in their assessment that reductions in the A&O subsidy remove opportunities to reduce premiums, then approved insurance providers will not request the opportunity to offer a premium discount under the premium reduction plan or submit premium discounts for RMA approval. Participation in the premium reduction plan is voluntary based on whether an approved insurance provider can achieve cost efficiencies that would qualify under section 508(e)(3) of the Act.

Further, the commenters do not provide an explanation to support the conclusion that the premium reduction plan does not support the objective of preventing unfair discrimination and that it is inherently discriminatory. The interim rule addresses the potential for discrimination on several fronts. First, the interim rule requires that the approved insurance provider first meet all requirements to qualify for crop insurance participation under the SRA, including certifying to abide by all Federal regulations prohibiting discrimination. Second, the interim rule requires that an approved insurance provider must automatically provide the same percentage of premium discount to all policyholders in the state if it elects to pay a premium discount. Third, the interim rule requires that for an approved insurance provider to be authorized to offer a premium discount, it must develop and implement a marketing plan which specifically targets small, limited resource, women, and minority farmers.

Comment: Several agents, approved insurance providers, and interested parties commented that RMA has further discriminated against the farmer by not allowing all approved insurance providers to offer plans and by allowing one new applicant for an SRA to offer a premium reduction plan as part of its SRA application based upon unpublished procedures and criteria. The commenter claims RMA has now denied all applications for plans based upon the Managers Bulletin No. MGR–03–008, dated May 1, 2003, and apparently it has not applied the same criteria to the only approved insurance provider approved for the premium reduction plan. A commenter claims this has allowed unfair competition in the marketplace to the detriment of other SRA Holders large and small. Commenters have stated the premium reduction plan should not be provided by only one approved insurance provider.

Response: Although section 508(e)(3) of the Act allows approved insurance providers to offer premium discounts, the approved insurance provider must be able to demonstrate that it can deliver insurance for less than the A&O subsidy, that its premium discounts correspond to cost efficiencies in delivery, and that it can meet other requirements established by FCIC. These additional requirements have been contained in several FCIC Board resolutions and Manager's Bulletin MGR–03–008. RMA has applied these requirements evenly across all approved insurance providers submitting premium reduction plans, including the only approved insurance provider that has been authorized to offer a premium reduction plan. In most cases where RMA has not approved an approved insurance provider, it has been because the approved insurance provider has not been able to demonstrate that it can deliver crop insurance for less than the A&O subsidy.

Notwithstanding what has occurred in the past, the interim rule is significantly different from the procedures or proposed rule because now approved insurance providers will not have to demonstrate they can deliver the crop insurance program for less than the A&O subsidy received from RMA before they are found eligible to participate in the premium reduction plan. RMA will simply be evaluating the marketing plan to determine whether it is likely to meet the requirement of reaching small, limited resource, women and minority farmers. If it is likely to be effective, approved insurance providers will be eligible for the opportunity to offer a premium discount to their policyholders. However, no premium discount can be paid until the approved insurance provider can demonstrate it has attained actual cost savings. This means that all approved insurance providers will be on equal footing under the interim rule.

Comment: A few agents and interested parties commented that the premium reduction plan is blatantly unfair to the different states it covers. The commenter states that certain states routinely make the insurance industry the profits they are required to make just so they can pay the amount of claims that occur in other states with poor loss history. With the requirement that all the states have to be treated the same the program discriminates against the farmers in those states.

Response: Because approval to pay a premium discount is determined by the actual expenses of an approved insurance provider in delivering crop insurance to farmers, underwriting gains or losses in a state should not be a consideration. The proposed rule was

based on that premise. However, RMA now recognizes that many factors, including underwriting gains or losses, may influence an approved insurance provider's decision to enter, remain in, or exit a state. As stated above, RMA has evaluated the consequences of approved insurance providers withdrawing from certain states if it required the approved insurance provider offer the premium reduction plan in all states and has elected to allow approved insurance providers to select those states in which it will participate in the premium reduction plan. Further, as stated above, the fact that some farmers will not have access to the premium reduction plan because one is not offered in the state is not discrimination as long as all farmers in the state are treated the same.

Comment: A few approved insurance providers and agents commented that the premium reduction plan discriminates against approved insurance providers that write on a national basis and are not cherry picking by selling on a geographical area basis. The commenter stated that these geographical areas tend to have the best performance. The commenter stated that the premium reduction plan also favors start up approved insurance providers that have no track record of performance.

Response: After further reviewing this situation in light of this and other similar comments received on this issue, RMA agrees that the proposed rule tended to favor regional approved insurance providers who generally sell in the lower risk areas. As stated above, RMA was concerned that requiring approved insurance providers to participate in the premium reduction plan in all states in which they do business would encourage approved insurance providers to pull out of states where they could not reasonably cut costs so that they could cut costs and offer a premium discount in other states to remain competitive. As stated above, RMA weighed interest of the farmer in receiving insurance versus the potential to receive a potential premium discount in the future and determined the former was much more important. For this reason, RMA revised the rule to allow approved insurance providers to select the states in which they will participate in the premium reduction plan.

Comment: An approved insurance provider commented that the current proposed rules do not provide adequate public disclosure to assure non-discriminatory program delivery in the future. As a result, these problems will inevitably persist.

Response: Much of the information provided by approved insurance providers is confidential business information which is protected from public disclosure. However, RMA has taken other measures to assure non-discrimination in the delivery of the program. One measure is the marketing plans that specifically targets small, limited resource, women and minority farmers. To ensure that such marketing plans are working, RMA may compare the compositions of the approved insurance providers' books of business. RMA can take remedial actions or impose sanctions if there is evidence that small, limited resource, women, or minority farmers are not being provided access to the premium discount. Another measure implemented in the interim rule is the consumer complaint provisions. These allow farmers to complain directly to RMA if they believe they have not been provided access to the premium reduction plan or have been unfairly discriminated against.

Comment: An interested party commented that the premium reduction plan should be implemented only with the strictest caution only for those approved insurance providers who have already demonstrated the capacity to fairly serve all farmers and that the final rule should include specific provisions designed to guarantee equitable services to minority farmers.

Response: The interim rule requires that approved insurance providers eligible for the opportunity to offer premium discounts first meet all requirements of the SRA. The SRA and approved procedures includes provisions regarding the service requirements to fairly serve all farmers. Further, the interim rule specifically requires approved insurance providers to market to all farmers, including small, limited resource, women, and minority farmers. In addition, since the premium discount is determined based on actual savings achieved during the reinsurance year, RMA will be able to evaluate the service provided and whether small, limited resource, women, and minority farmers were adequately served before approving any premium discount.

b. Crop1

Comment: Many agents, farmers, and other interested parties claimed that Crop1 is selecting only large farmers to offer the discount to and not all of their customers. A commenter stated that a marketing mailer from Crop1 seemed to be sent only to customers who had at least 750 acres. A commenter stated that Crop1 agents misrepresent quotes in order to mislead another agent's clients. Commenters state that they cannot make a living if they lose their large customers. A commenter stated that Crop1 only advertises to large farmers. Commenters stated that Crop1 was not being forced to market with equal resources to all farmers. A commenter stated that approval of Crop1 was irregular, discriminatory and illegal because it ignored the civil rights statutes and the provisions of the SRA requiring approved insurance providers to sell to all farmers.

Response: Under existing RMA procedures, any approved insurance provider authorized to offer premium discounts, including Crop1, must automatically provide the discount to all of its policyholders. RMA has no evidence that any Crop1 policyholder has ever been denied the appropriate premium discount. As part of its premium reduction plan monitoring effort, RMA monitors the marketing materials and practices of Crop1. As far as RMA has been able to determine, none of these marketing activities, including advertising, have been directed to farmers of a certain size. RMA does not regulate agent solicitation activities and, therefore, cannot eliminate the possibility that agents representing Crop1 may target larger farms through their mailings or through other means. Such conduct by agents is not precluded in the SRA or the existing procedures.

Further, to the extent that such conduct has occurred in the past, the interim rule has provisions to mitigate such conduct, such as requiring approved insurance providers to design and implement their marketing plan to specifically reach small, limited resource, women and minority farmers and to require agents identify to farmers all approved insurance providers for which it writes that participate in the premium reduction plan. Further, RMA can compare approved insurance providers' books of business in the states in which participate in the premium reduction plan to identify when small, limited resource, women and minority farmers may not be receiving access to the premium discount and take the appropriate action.

Comment: Several agents and an interested party commented that the premium reduction plan agencies do not offer nor advertise to their current customer base the availability of the premium reduction plan unless they specifically ask about it and only use the premium reduction plan to attract new business. A commenter states that agents are only pushing the premium reduction plan in the one area where it does not have much business but where

the agent has a lot of business, farmers are being told the premium reduction plan is a bad thing and that they do not want to use it. A commenter stated the reason they do not offer it aggressively to their current customer base is that it will reduce their commissions by as much as one-half. A commenter concludes that the agents who have signed on with Crop1 use it only as a tool of last resort to capture business from other agents who do not offer it, while at the same time trying to make sure their current customers do not hear about it. A commenter stated that farmers do not receive real service just so Crop1 can have a competitive advantage. Commenters stated the premium reduction plan is being used as a predatory tool.

Response: Under the existing premium reduction plan procedures as well as under the interim rule, if an agent represents an approved insurance provider authorized to offer the premium reduction plan, then all policyholders of that approved insurance provider through that agent will automatically receive the premium discount that has been authorized. RMA is not aware of any cases where a policyholder of an approved insurance provider that is authorized to offer the premium reduction plan has been denied the premium discount. Moreover, agents routinely solicit the most profitable farmers under the existing crop insurance program. As stated above, RMA does not regulate the solicitation activities of agents. It regulates the marketing of the approved insurance provider to ensure that small, limited resource, women, and minority farmers receive access to the premium discount and these requirements have been strengthened and clarified in the interim rule.

The commenter appears to be describing a situation in which an agent represents both an approved insurance provider eligible for the opportunity to offer a premium discount as well as one or more other approved insurance providers. The commenter seems to believe that the requirement of the approved insurance provider to offer the premium reduction plan to all of its policyholders is implicitly extended to agents. This is not the case. However, to ensure that all farmers are made aware of the opportunity to participate in the premium reduction plan, agents are now required to inform all of their customers of all the approved insurance providers they write for that participate in the premium reduction plan. Lastly, any advertising by agents and approved insurance providers prior to being approved to pay a premium discount has been significantly curtailed because premium discounts are now based on actual, not projected savings. Therefore, no agent can advertise that a premium discount is available in order to obtain new policyholders.

Comment: An agent commented that because Crop1 is limited as to how much insurance it can write and can only write in certain states, the premium reduction plan is not available to all farmers, which contradicts RMA's statements regarding discrimination.

Response: RMA is obligated to comply with section 508(e)(3) of the Act regardless of how many approved insurance providers qualify to be able to offer premium discounts, how many states they write in, or how much premium they are authorized to write. Only approved insurance providers that have actual A&O costs less than their A&O subsidy can pay a premium discount. However, under the alternative rule, this burden does not have to be proven up front and any approved insurance provider can qualify for the opportunity to offer a premium discount based on the marketing plan and other standards contained in the interim rule. The payment of any premium discount will still be conditioned upon a showing of the requisite savings.

Further, as stated above, as long as all farmers are treated the same where a premium reduction plan is available, there is no discrimination. It is only where farmers in a state where the premium reduction plan is available are treated differently is there discrimination.

c. Small, Women, Minority Farmers

Comment: A farmer commented that they had heard agents comment that small farmers will be hurt by not being serviced. The commenter stated that the agent's definition of a small farm may be more like a 10 or 20 acre special farm (*i.e.* organic or other), not USDA's definition of gross income of $250,000 or less. The commenter asked that when RMA is confronted by the approved insurance providers' reasons against the premium reduction plan that RMA is on the same page with the terminology. The commenter asserted that it is illegal to NOT sell to a farmer customer, no matter how big or small and that one would think the agent would not risk an E&O claim.

Response: RMA agrees that the SRA prohibits an approved insurance provider or its agents from refusing to provide crop insurance to an otherwise eligible farmer, regardless of size. Approved insurance providers can be sanctioned for non-compliance. Nothing in the interim rule would change this requirement and would extend sanctions in the interim rule to agents as well as approved insurance providers that violate this prohibition.

Moreover, the interim rule contains features that help ensure that service to small farmers will be adequate, in contrast to what the commenter had heard from certain agents. Under the interim rule, all approved insurance providers are required to comply with the service requirements of the SRA and approved procedures for all policyholders, both small and large or be subject to sanctions. Further, the marketing plan requirement is designed to ensure that small farmers have access to any premium discount. Unless otherwise provided for in procedures, RMA will be relying on the definition of ''small farm'' issued by USDA. However, RMA wants the flexibility to adjust the definition if the need arises.

Comment: Several agents commented that they had not seen unfair discrimination against farmers as noted in the proposed rules. The commenters stated they were servicing the small and large farmer just as other agencies did prior to the premium reduction plan, with no decline in claims servicing and it does not matter if our grower is male or female; if they are insuring as little as 25 acres crop or up to 27,798 acres. A commenter states that when given the option to buy insurance at the usual price or a premium reduction plan price, farmers chose the premium reduction plan. A commenter states this is one area where farmers were able to secure a savings that they could show their lender; that gave them an opportunity to buy-up; or assisted with off-setting increased input costs. Knowing their savings up-front provided an offense against the many unknown factors that confront them every year when they go into the field. A commenter stated that the premium reduction plan is of extra importance to smaller farmers that don't have the financial strength to purchase the coverage that they really need. Although the total savings to a small farmer seems negligible, the per acre savings is significant.

Response: RMA would agree with the commenters that unfair discrimination provisions are being effectively enforced, that service requirements under the SRA and approved procedures are being maintained, and that small farms are receiving premium discounts. However, although RMA agrees that knowing the amount of premium discount up front can be beneficial, as stated more fully above, the ability to effectively regulate the

program will be difficult. Therefore, RMA has elected to base premium discounts on actual savings, not projected savings, thereby reducing the burden on approved insurance providers in becoming eligible for the opportunity to offer a premium discount and on RMA and approved insurance providers in determining the amount of any premium discount, if any, that is available for the reinsurance year. RMA anticipates that this will effectively give more farmers the opportunity to receive such premium discounts. Further, when evaluating the possibility that an approved insurance provider may leave a state versus the payment of a premium discount, RMA determined that the former was more critical and have given approved insurance providers the option to select states.

Comment: Many agents, approved insurance providers, loss adjusters and other interested parties claim that new or small farming operations, women, minority, and limited resource farmers will be harmed the most. Commenters stated these groups will have more difficulty competing with larger, lower risk farmers and farms in high risk areas will end up without service. They claim FCIC's proposed rules concerning administration of the premium reduction plans do not adequately protect small and minority farmer from unfair discrimination on the basis of size and risk of loss. Commenters stated approved insurance providers will target farmers considered to be the most profitable based on their acreage size, the loss ratios of the counties they are in—particularly whether the county or state is in a favorable or unfavorable loss area—and whether farmers can afford to pay higher premiums for higher coverage levels. A commenter stated that these are the farmers crop insurance was intended to protect. The commenters also claim the agents will have to accept less commission and, therefore, spend most of the time servicing only the larger farmers in their agencies. One commenter claims it would not be fair to small farmers nor to loyal agents who have represented FCIC well in this part of the country. A commenter states that typically, smaller farm operations tend to have higher loss ratios, so again small family farmer clients will suffer the most. A commenter stated that the premium reduction plan will put many of the smaller farmers at risk for a catastrophe.

Response: RMA disagrees with the comments that high-risk areas will lose service and that the interim rule does not protect against unfair discrimination on the basis of size and risk of loss. Any approved insurance provider that is eligible to participate in the premium reduction plan must qualify under the terms of the SRA, which prohibits an approved insurance provider from denying insurance to any eligible farmer, regardless of size or loss history, and establishes specific requirements for policyholder service. The interim rule adds a further restriction that an approved insurance provider cannot deny a premium discount to any existing or prospective policyholder on the basis of size or loss history. It is doubtful that an approved insurance provider would risk sanctions under the SRA and interim rule by allowing service to fall below SRA and approved procedure requirements or by denying insurance or premium discounts to otherwise eligible farmers.

The interim rule further prevents an approved insurance provider from ignoring the risk management needs of small, limited resource, women, or minority farmers because to qualify for the opportunity to offer a premium discount, an approved insurance provider must develop and implement a marketing plan, which specifically targets such farmers. Further, RMA will be closely monitoring the situation to ensure such farmers are not denied access to premium discounts.

With respect to an approved insurance provider targeting only the most profitable areas based on their loss history, a strong incentive to do this exists currently and has existed ever since the delivery of Federal crop insurance was transferred to private approved insurance providers. However, as stated above, the interim rule does require the approved insurance provider to also target small, limited resource, women and minority farmers and RMA will be monitoring their efforts. With respect to agents' shifting service away from smaller policyholders to better service larger policyholders because, the commenters assume, commission rates would decline, an approved insurance provider and its affiliated agents are obligated to maintain a required level of service under the terms of the SRA and approved procedures for all policyholders, both large and small. If a group of policyholders fail to receive the required level of service, the approved insurance provider risks sanctions under the SRA and interim rule. In any event, as stated above, the interim rule contains provisions specifically designed to protect the interests of small, limited resource, women, and minority farmers and RMA has added teeth to its sanctions to provide the incentive to comply.

Comment: An interested party commented that RMA spends millions each year in educational outreach and maybe it should take some of that money and contract for a study of the impact of this education on small, limited resource and medium-sized family farms.

Response: Although the commenter's suggestion may have some merit, it does not address issues concerning the proposed rule.

Comment: A few agents commented that farmers can currently purchase CAT coverage for very minimal expense and in some cases free for limited resource farmers but they don't participate in the crop insurance program now. The commenters asked how the premium reduction plan would benefit them or increase participation.

Response: The commenter may be correct that some farmers may not avail themselves of the benefits of crop insurance regardless of the incentive that might be provided by premium discounts. The legislative history of section 508(e)(3) of the Act suggests that increased price competition among approved insurance providers is the major objective and increased participation may be the result of such competition.

Comment: Several agents and an approved insurance provider commented that as the large accounts are ''cherry-picked'' by the premium reduction plan, the smaller farmers will be left to bear alone the overhead and cost of the traditional plans. A commenter stated it will be financially challenged to continue servicing smaller accounts. A commenter stated that the premium reduction plan is NOT being used as a beneficial option to farmers but is instead being used to ''cherry pick'' the existing policies of big farmers who are current customers of other agencies. A commenter also stated that premiums for smaller farmers will necessarily increase, thus exacerbating the current deplorable situation that is rapidly destroying this nation's family farms. Some approved insurance providers are discriminating against small farmers by cherry picking large farmers and offering to bundle other services at reduced prices at the expense of small farmers.

Response: RMA has investigated the marketing activities of the approved insurance provider currently authorized to offer the premium reduction plan and has found no evidence that the approved insurance provider is specifically and exclusively targeting large farmers. However, RMA accepts the possibility that some agents of the approved insurance provider currently

authorized to offer the premium reduction plan might be targeting larger and more profitable policyholders of competing agents. As stated above, such practices are not be prohibited by the Act or the SRA. RMA does not regulate the conduct of agents in the solicitation of business.

However, to mitigate such conduct by the agent, the interim rule puts the burden on the approved insurance provider to ensure that the premium reduction plan is adequately marketed to small, limited resource, women and minority farmers. As stated above, RMA will be able to monitor the situation and determine whether approved insurance providers' marketing plans were successful before it approves any premium discount. Further, market forces are the best means to control the conduct of agents because approved insurance providers are unlikely to be the recipient of only the potentially unprofitable policies while competitors get the potentially more profitable policies.

With respect to the comment that agents that do not offer the premium reduction plan will be left to service only smaller accounts, the commenter is describing a situation that is possible regardless of whether the premium reduction plan is operating or not. However, the interim rule has taken measures to mitigate potential problems. Now approved insurance providers will be allowed to select the states in which to participate in the premium reduction plan. This would allow approved insurance providers to elect not to participate in states where its cost margins are low.

Further, as stated above, approved insurance providers have the incentive to ensure that agents are provided a fair commission. However, the determination of what constitutes fair compensation is strictly between the approved insurance provider and agent. In addition, commenters have pointed out that some farmers will value superior service over any premium discount, especially when such discount is no longer guaranteed. Therefore, even those agents that do not participate in the premium reduction plan could still compete.

With respect to the comment that premiums for smaller farmers will necessarily increase, the commenter does not indicate why the premium reduction plan would cause this to happen. Premiums are determined by a rating methodology based on the frequency or severity of losses and are not related to premium discounts. The amount of premium paid each year to cover losses is not changed under the premium reduction plan. The only thing that is changed is that the approved insurance provider now pays to the farmer a discount based on cost savings expressed as a percentage of the total premium.

With respect to the comment that some agents will use the premium reduction plan to bundle crop insurance with other products offered by the agent, this is an issue that also is outside the interim rule. Such conduct is prohibited by the SRA and agents are under the scrutiny by both RMA and the states with respect to market conduct and illegal rebating through bundling. Nothing in the interim rule would make it more attractive to engage in such illegal practices.

Comment: An agent commented that the areas it serves have a number of limited resource, socially disadvantaged, and minority farmers. The commenter asked that once it is forced out of business due to the proposed marketing scheme, who will service this segment.

Response: The commenter predicts that he or she will be forced out of business as a result of the premium reduction plan. However, as state above, approved insurance providers have an incentive to retain their agents and their books of business to maximize profits and ensure that customers are receiving the required level of service. Further, the interim rule now bases premium discounts on actual savings and severely limits advertising or promotions. Therefore, the impacts on the program should be significantly decreased and effectively phased-in over time because the discounts will be paid after the end of the reinsurance year. Even if the commenter is correct and some agents go out of business, under the SRA, it is the approved insurance provider's responsibility to assign other agents to provide the required service to these policyholders.

However, RMA understands the agent's concerns that approved insurance providers may withdraw from states if they are forced to offer a premium discount in all states in which they do business. As stated above, RMA has elected to allow the approved insurance provider to select which states to participate in the premium reduction plan. While this may mean that some farmers may not be able to receive a premium discount, it assures that these same farmers will have continued access to crop insurance.

Comment: A few agents commented that back in the late 80's agents wanted to give cash discounts to farmers who paid their premiums early, but RMA said they could not because it favored the larger farmers. The commenter stated that now RMA is trying to give the larger farmers an unfair discount. The ones (family farms) that need the help are not receiving it.

Response: The commenter does not make the distinction between an unauthorized initiative of certain agents to offer discounts according to their own terms and section 508(e)(3) of the Act, which permits approved insurance providers to offer premium discounts. Under section 508(e)(3), RMA is obligated to provide approved insurance providers with the opportunity to pay premium discounts, subject to the limitations it establishes. As stated above, one of the limitations is that premium discounts have to be specifically marketed to small, limited resource, women, and minority farmers. Therefore, RMA is not trying to give larger farmers an unfair discount.

Comment: Several agents and other interested parties commented that crop insurance was designed to give all farmers protection from natural disasters and that all farmers means large and small. They claim that RMA tells them that they must service all farmers equally and rightfully so. They claim that it is ironic that RMA is proposing just the opposite and that if the premium reduction plan is approved then the civil rights laws and regulations applicable to federally assisted programs must be amended to require removal of the ''Justice for All'' poster because the premium reduction plan will not be providing justice for all.

Response: RMA would agree with the commenters that the benefits of crop insurance are intended for both small and large farmers and that those that participate in the program are expected to treat all farmers equally. However, RMA disagrees with the comment that RMA is proposing the opposite to this. In any state that an approved insurance provider participates in the premium reduction plan, it must make any premium discount available to all farmers large and small. To ensure this occurs, RMA requires the design and implementation of a marketing plan for all farmers, including small, limited resource, women and minority farmers. As long as all farmers within a state are treated equally, there is no discrimination. If RMA determines that not all farmers have been treated equally, it can impose sanctions. Further, RMA can make this determination before any premium discount is approved. Finally, under the interim rule, farmers who believe they have not been treated fairly have a means of bringing their complaints directly to RMA.

Comment: Many agents, interested parties, approved insurance providers and loss adjusters commented that the premium reduction plan could encourage selective ''red-lining'' of specific states, crops and agencies without federal oversight. They claim the approved insurance providers will only write in areas that are profitable. A commenter states that the requirement that national approved insurance providers provide premium reduction plan discounts in the unprofitable states creates an incentive for these approved insurance providers to withdraw from these areas in order to concentrate on the more profitable states. A commenter is concerned that some farmers with poor loss histories in certain states will be excluded by certain approved insurance providers because the approved insurance providers would not be willing to write in those states. A commenter stated that due to the danger of a ''domino effect'' on approved insurance provider participation, farmers in these states could be left without an opportunity to obtain protection for their farm operations. A commenter states that this jeopardizes the national characterization of crop insurance, which is necessary to its future.

Response: Selective redlining of states can occur now. RMA does not require approved insurance providers to offer crop insurance in all states. The approved insurance provider selects the states in which it will do business. Presumably, this selection process is based on the potential profitability of the state in light of the terms provided under the SRA. Even considering profitability, approved insurance providers are currently participating in high risk states.

However, as stated above, RMA acknowledges that if an approved insurance provider is required to offer a premium discount in all states in which it does business, it may withdraw from certain states, leaving farmers with no coverage. To prevent this, RMA has elected to allow approved insurance providers to select the states in which it will offer a premium discount. While this may exclude farmers in a particular state from receiving a benefit that others in an adjoining state may receive, at least these farmers will still have access to crop insurance even if they do not have access to a premium discount. Within a state where a premium discount is being paid, all farmers insured with the approved insurance provider making the payment will receive the premium discount regardless of their loss history.

Comment: An interested party commented that the requirement in section II.A.2 of the SRA that approved insurance providers offer the premium reduction plan in all states they do business makes it clear that cherry picking is not acceptable.

Response: RMA disagrees with the commenter that section II.A.2 of the SRA states that an approved insurance provider must offer the premium reduction plan in all states. Section II.A.2 of the SRA obligates the approved insurance provider to provide insurance to all farmers who make application unless such farmer is ineligible. The requirement that approved insurance providers offer a premium discount plan in all states arose in the proposed rule and, as stated above, RMA has reconsidered this position and will now allow approved insurance provider to select the states in which it will participate in the premium reduction plan. In those states where the approved insurance provider elects to participate, the approved insurance provider must make pay any premium discount to all farmers or it will be in violation of the interim rule and subject to sanctions.

Comment: A few agents commented on the potential ability of approved insurance providers to offer discount and non-discount insurance in the same state. The commenter claims this goes against everything that the current crop insurance delivery system stands for. The commenter states that letting approved insurance providers' offer both discount and non-discount insurance in the same state would lead to the biggest case of ''Cherry-Picking'' the crop insurance industry has ever seen.

Response: RMA agrees completely with the commenter. Both the proposed rule and the interim rule require that an approved insurance provider must automatically pay any premium discount to all policyholders in a state in which the approved insurance provider is participating in the premium reduction plan and it is approved to pay a premium discount. Approved insurance providers that only pay the premium discount to certain farmers in a state will be subject to sanctions under the interim rule.

Comment: An approved insurance provider commented that FCIC appears to have understated the extent of this problem in the Federal Register release when it states, ''it would be easy to determine if practices were unfairly discriminatory because the approved insurance provider was required to offer the discount to all producers who wanted it.'' However, approved insurance providers can pay different agent commissions and agent profit-share levels based on the state or agency to which it is marketing. The commenter stated that an approved insurance provider would be more likely to emphasize marketing of the premium reduction plan in a state or part of a state where it can produce a superior underwriting gain, leaving less profitable regions underserved. The commenter stated that such an outcome would directly undermine the principle that ''no premium reduction plan can be unfairly discriminatory against producers based on their loss history, size of operation, or the amount of premium generated within the program.''

Response: RMA questions the commenters' assumption that an approved insurance provider would be more likely to market premium discounts in areas where the approved insurance provider expects underwriting gains and to ignore them in high risk areas. The ability to be approved to pay premium discounts depends on the approved insurance provider's ability to deliver crop insurance for an amount less that the A&O subsidy, not underwriting gains. Further, RMA's experience with the premium reduction plan to date indicates that an approved insurance provider is not necessarily averse to marketing the premium reduction plan in a state with large historical loss ratios.

Nevertheless, RMA is concerned with the number of comments it has received that high risk areas might be underserved and that requiring an approved insurance provider to participate in the premium reduction plan in all states could lead to a decision to leave certain states by approved insurance providers. Therefore, the interim rule allows an approved insurance provider to select those states where it elects participate in the premium reduction plan. This change should help ensure that farmers in certain areas do not lose their opportunity to obtain crop insurance protection. Further, RMA cannot require that approved insurance providers pay premium discounts in states where the achieving of cost efficiencies put the program in that state at risk. Therefore, while loss experience and premium size may play a role because of the amount of expense required to service such policies, RMA has determined that the continued availability of crop insurance is more important that the possibility of receiving a premium discount in the future.

Comment: Several agents, approved insurance providers and interested

parties commented that USDA can ill-afford more discriminations suits. A commenter suggested the premium reduction plan will cause ill feelings toward the government.

Response: RMA disagrees with the implication that the premium reduction plan will generate discrimination litigation. As stated above, discrimination only occurs when farmers in the same state are treated differently. As stated above, RMA has taken measures to ensure this does not happen, including the ability to evaluate whether discrimination has occurred before approving a premium discount. Therefore, the potential for discrimination litigation should not be any greater than under the current crop insurance program.

4. Expert Reviews

Comment: Many agents, approved insurance providers, interested parties, and a loss adjuster commented that RMA chose not to seek independent review by parties with expertise in the marketing, selling, and operations conducted by insurance agents in the delivery of crop insurance. They state RMA should revisit agent compensation by seeking review by qualified insurance agency sales and management experts—and get knowledge-based advice regarding the negative impact that reduction in agent compensation will have on the crop insurance delivery system, and the economy of our rural communities. A commenter also states that RMA should conduct a study to anticipate what effects widespread adoption of the premium reduction plan might have on the public/private partnership that has been so successful in reducing farmers' reliance on ad hoc relief.

Response: While commenters may disagree with the expert reviewers selected, their input was only to assist in creating the proposed rule. When creating the interim rule, RMA has sought the opinions of the very people that would be most affected by the rule, agents, farmers and approved insurance providers through the notice and comment rulemaking process. Through these comments, RMA has been able to more accurately determine the impact of the premium reduction plan. As a result of these comments, as stated above, RMA has made considerable changes to the proposed rule to address the commenters concerns.

However, RMA agrees that additional input may be valuable so it has decided to implement this rule as an interim rule so that additional comments may be sought during the initial implementation of this regulation.

Comment: Many agents, farmers, interested parties and approved insurance providers stated that the independent reviewers commissioned by RMA found that premium reduction plan proliferation will only result in a modest increase in participation in the crop insurance program. The commenters stated that only those already insured will participate, which will do nothing to contribute to a reduction in ad hoc disaster relief and that the premium reduction plan will do nothing to promote new participation by those who are currently not purchasing crop insurance.

Response: The commenters assume that objectives of the premium reduction plan are to increase participation and to reduce the need for ad hoc disaster aid. However, from its legislative history, the stated objective of the premium reduction plan is to allow for price competition in the market for crop insurance. Any increase in participation would be an effect, not the objective. Therefore, regardless of whether there is any increase in participation, RMA is obligated to implement section 508(e)(3) of the Act.

Comment: Several agents and interested parties commented that they disagreed with the independent reviewer's assessments of the impact of the widespread use of the proposed premium reduction plan. One commenter stated the assessments were devoid of facts or statistics. One finding in particular estimated that there would be an increased use of the crop insurance program by farmers. The estimated increase on a nationwide basis was a total of 3,312,934 row crop acres. The commenter asks how the experts arrived at these figures and stated the experts should show their work. A commenter stated fewer agents will make it harder for farmers to participate. A commenter stated that the premium reduction plan has not brought any of the uninsured acreage into the crop insurance program.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmers to benefit.

Further, as stated above, it is unlikely that the premium reduction plan will result in a substantial reduction of the number of agents. Approved insurance providers have the incentive to retain their agents and their books of business to maximize profitability and ensure a stable workforce that will provide farmers with the service required by the SRA and approved procedures. In addition, as stated above, RMA has revised the proposed rule to reduce the incentive for approved insurance providers to make drastic cuts to agent commission or cause market disruptions.

Comment: An agent commented that RMA's independent reviewers seemed to believe that the premium reduction plan would increase farmer participation in the program. The commenter claims this is an incorrect assessment. The insurance program is complicated enough. Taking a complicated process into more of a self-service mode is not likely to increase program participation to any measurable degree.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, as stated above, there is nothing in the interim rule that would require insurance be self service. In fact, the interim rule makes it very clear that approved insurance providers and agents are required to comply with the service requirements in the SRA and approved procedures or risk the imposition of sanctions. In this respect, RMA believes that even with the participation in the premium reduction plan of another agent, many farmers will choose to remain with their agent based on the service provided by that agent. The premium reduction plan will introduce price competition as an element in the decision making of farmers. However, it will not be the only factor and frequently will not be the deciding factor.

Comment: An interested party commented that when increasing levels of coverage costs over 50% in premium from one level to the next, a 5% or 10% reduction will not do anything to increase participation by the farmer. What it may create, is a rate war between the approved insurance providers until no one can afford to service the policies the way you expect them to be serviced.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the

program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, as stated above, RMA has revised the proposed rule to remove the incentive for approved insurance providers to engage in premium discount wars and instead has developed a process that allows the approved insurance provider to conduct a reasoned analysis of its business to determine where costs savings may be appropriate and allows RMA to ensure that all SRA, approved procedures and the premium reduction plan requirements have been complied with and that the financial stability of the approved insurance provider will not be adversely affected before approving the payment of any premium discount. Therefore, insurance agents should not be driven out of business and farmers still should be adequately served.

Comment: Many agents, approved insurance providers and farmers commented that farmers who want crop insurance are already buying it so participation will not increase under the premium reduction plan. Commenters stated that if farmers are not buying crop insurance with a 38% to 67% subsidy, the 5–10% premium reduction plan discount will not make them buy it. A commenter stated that program participation is nearly 80% now so it is clear that the premium reduction plan has not been necessary to achieve current participation levels. A commenter stated that most farmers saved about $1.00 per acre with the premium reduction plan and that if the $1.00 savings meant that much to a farming operation as far as the farmer being able to farm in the future, than that operation has other factors that will keep him in or out of business in the future.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, if the commenters are correct and that the typical policyholder will not be motivated much by premium discounts, then there should be minimal impact on the crop insurance program by the implementation of the interim rule.

Comment: An agent commented that currently, participation in crop insurance is at about eighty percent and that there is not an agent alive who wants those last twenty percent. The commenter stated that those that make up that twenty percent are very non-government and would rather live without crop insurance.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Comment: A few agents and interested parties commented that the argument that more farmers will buy crop insurance if it is cheaper is false. The commenter stated that if RMA wants more farmers to buy crop insurance, make crop insurance mandatory to get a farm payment. Another way would be to reduce disaster payments and put that money towards more subsidies of higher levels of crop insurance. Make farmers responsible for their own operation.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, commenters suggestions regarding the use of disaster payments or a requirement that farmers purchase crop insurance to receive farm payments is outside the scope of this rule. Consequently, RMA cannot consider taking this action.

Comment: Several agents and interested parties commented that farmers were unlikely to use the premium reduction plan savings to increase coverage. A commenter stated it sold the premium reduction plan to battle competitors. A commenter stated that those customers that did buy the premium reduction plan, none of them bought higher coverage because of the discount. Another commenter said only a few farmers increased coverage. Commenters state that those participants will most likely redirect their premium savings to another product as opposed to purchasing additional coverage, and it will do nothing to promote new participation by those who are currently not purchasing crop insurance.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Comment: An agent commented that he or she hoped that the available discount would entice more local customers to join the agency but the only customers he or she gained were smaller farmers who actually were not engaged in farming on a full-time basis.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Comment: A few agents and interested parties commented that the premium reduction plan will not increase participation. A commenter suggested that the premium reduction plan would negatively impact the delivery system. Commenters stated that the crop insurance program needs to be simple. A commenter suggests making it an entire farm income program. A commenter stated that farmers don't like all of the plans to choose from and all they want is a policy based on a flat dollar amount of protection per acre. A commenter suggests that this should be looked at before RMA lowers premium and find it only did just that. A commenter suggested making the delivery system more efficient.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

However, RMA agrees that simplification is beneficial to the crop insurance program and it has taken considerable measures to simplify the premium reduction plan and the process under the interim rule. In addition, RMA is always looking at ways to simplify the delivery of crop insurance, such as the combination of policies, simplifying the claims process, etc.

The commenter also implies that in the premium reduction plan, RMA is lowering premiums. This is not correct. The amount of premium stays the same. What is occurring is that approved insurance providers can pay premium discounts to farmers to help them, if they so choose, to defray their premium costs.

Comment: An interested party commented that there will likely be a decrease in participation because agents will drop out of the business and

farmers will drop out because there are no agents nearby to service them.

Response: As stated above, it is unlikely that the premium reduction plan will result in a substantial reduction of the number of agents. Approved insurance providers have the incentive to retain their agents and their books of business to maximize profitability and ensure a stable workforce that will provide farmers with the service required by the SRA and approved procedures. Failure to meet those requirements could result in the imposition of sanctions. In addition, as stated above, RMA has revised the proposed rule to reduce the incentive for approved insurance providers to make drastic cuts to agent commission or cause market disruptions.

Comment: An interested party commented that the premium reduction plan will increase participation in the program the longer it is available.

Response: As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Comment: An agent commented that the expert reviewer was incorrect when he stated that a cozy relationship between the agent and farmer suggests fraud. The commenter stated that the agent needed to be well grounded with farmers to be able to serve them.

Response: The comment is unrelated to the interim rule. Nothing in the interim rule would change the relationship a farmer has with his or her crop insurance agent.

Comment: Several interested parties and agents commented the five experts have the opinion that crop insurance agents are overpaid. A commenter suggests they get their license and try delivering crop insurance to the farmer. A commenter stated that agent commissions have been in a steady and consistent decline since the first SRA was put in place by RMA. In fact they had dropped between 40–50% from original levels. A commenter states that agent commissions are at rock bottom levels NOW and that between the 2004 and 2005 insurance years, net income will be reduced by about 15% due to cuts in the A&O from the renegotiated SRA.

Response: As stated above, RMA only sought the opinion of the expert reviewers to assist it in the development of the proposed rule. However, with respect to the interim rule, RMA has sought and received comments, through the notice and comment rulemaking process, from the parties most affected by the rule and it has examined these comments and made appropriate changes to the proposed rule to minimize the adverse impact on agents, farmers, approved insurance providers and the integrity of the program.

Comment: Several interested parties and agents commented that RMA, in its exuberance to implement the premium reduction plan program, purchased 5 opinions and most of the five opinions made many points about the premium reduction plan, bringing to light the many flaws in trying to deliver crop insurance on a cut rate basis. A commenter asked why RMA does not get a true ''expert'' opinion from someone working directly in the system in a rural area and not from a high priced consultant based in Washington, DC. A commenter stated that three of the purchased opinion providers then have the audacity to give a summary that flies in the face of many of the flaws they had previously stated in their report. It should be noted that there is no research to back the purchased opinions. A commenter disagreed with an expert opinion that it costs ''about $50 to write a new client.'' A commenter states that the actual annual cost per farmer client to maintain all agency systems and do the job in keeping with its responsibility level is about 10 times that amount.

Response: As stated above, RMA only sought the opinion of the expert reviewers to assist it in the development of the proposed rule. However, with respect to the interim rule, RMA has sought and received comments, through the notice and comment rulemaking process, from the parties most affected by the rule and it has examined these comments and made appropriate changes to the proposed rule to minimize the adverse impact on agents, farmers, approved insurance providers and the integrity of the program.

5. Other

a. For the Premium Reduction Plan

Comment: An approved insurance provider commented that the proposed rule strikes the correct balance between the various interests at stake, including the interests of farmers in obtaining crop insurance at the lowest possible cost. The balance struck in this proposal ensures a stable, competitive crop insurance market, and protects the industry delivery system as approved insurance providers compete for agents. The commenter states that the fundamental purpose of section 508(e)(3) was to offer farmers more choices while saving money on crop insurance, by increasing competition in the crop insurance market through offering crop approved insurance providers the opportunity to compete on price. The introduction of the premium reduction plan into the market allows approved insurance providers to compete on price and service to farmers, rather than simply on who pays the highest commissions. The commenter also states that the proposed rule promotes the interests of the American farmer by institutionalizing the premium reduction plan approval process into a permanent rule that will enable approved insurance providers to pass along cost savings to farmers.

Response: RMA agrees that the proposed rule attempted to implement 508(e)(3) of the Act in a manner that strikes a balance that allows for a competitive market place between approved insurance providers with respect to price, protects the delivery system, and promotes the interests of farmers. Further, the interim rule built on that framework and addressed the concerns of adverse impacts on the program.

Comment: Many farmers, agents and interested parties commented that the premium reduction plan helps farmers. Commenters stated that in today's farm economy, farmers are faced with rising costs of almost all inputs and that farmers constantly have to look for ways to keep farms efficient, cost effective, and competitive in a world market and getting a discount on crop insurance is a step in that direction. A commenter stated that farmers are viewing crop insurance more and more like an input such as seed, fuel and fertilizer. Commenters stated that as farmers have little to no control of commodity prices, discounts on any farm related expenses are appreciated. One commenter states that while there has been opposition to the discount plan within the insurance industry in the past, agents and approved insurance providers, like farmers, need to look for efficiencies as well.

Response: RMA agrees that the premium reduction plan was intended to ultimately benefit farmers by allowing approved insurance providers to compete for their business on the basis of price as well as service, like the other vendors with which the farmer does business. RMA also agrees that the premium reduction plan will result in approved insurance providers examining their operations to find cost efficiencies.

Comment: Many farmers and agents commented that with the premium reduction plan farmers are able to

increase coverage levels at a discount, which has helped to better control risks. Commenters claim farmers saved significant savings on premiums. Commenters stated that current insureds enrolled in the premium reduction plan would be very disappointed if the program was discontinued.

Response: RMA agrees with the comment that the premium reduction plan allows farmers to consider increasing coverage for better protection and that some farmers may receive a significant premium discount. However, as stated above, such cost savings under the interim rule will not directly reduce the cost of premiums because the premium discount will not be paid to the farmer until after the premium is due. Therefore, there is no guarantee that farmers will receive premium discounts. However, for those approved insurance providers that can achieve efficiencies, they have the incentive to pass those efficiencies on to their customers.

Comment: Several interested parties, farmers, and agents commented that the idea of giving the farmer more for less is a good idea. A commenter stated that if the customer did not benefit, the discount would go away on its own. A commenter said it is great that Crop1 is willing to abide by government rules, and be able to offer the same coverage for a better value to the farmer.

Response: RMA agrees that the premium reduction plan generates benefits for farmers. RMA also agrees that, because participation by approved insurance providers in the premium reduction plan is voluntary, approved insurance providers and farmers would not participate if they did not perceive a benefit. The commenter is also correct that based on the reviews conducted by RMA, Crop1 did operate in compliance with the requirements of the SRA and approved procedures, including the premium discount plan procedures.

Comment: An agent commented that many farmers are seeking a more knowledgeable crop insurance agent and that is exactly what the agent is offering. The commenter stated that the ''new generation'' of agents truly understands risk management for farmers. The commenter stated that with a background of providing marketing advice and hedging strategies, more and more farmers are seeking services. Being able to offer them a discount allows clients to manage their overall risks at less cost.

Response: RMA agrees that many farmers are seeking more knowledgeable crop insurance agents, including those that offer other risk management tools. RMA does not believe that the premium reduction plan will reduce that interest or that agents will stop competing on the basis of superior service. Competition on price and service can only benefit the crop insurance program.

Comment: A few farmers and agents commented that they were impressed with Crop1's technology. The commenters stated they liked the internet access because with the world becoming more technologically advanced it is nice to see an approved insurance provider stepping up to the plate and becoming a leader, rather than waiting until everyone else does it first. A commenter stated that with the Crop Saver analysis by Crop1, it was able to accurately show the comparative premium for the different levels of coverage and the total revenue farmers would receive with multiple peril versus coverage with Revenue Assurance and that Crop1's technology is allowing the agency more time to service clients and also prospecting for new clients.

Response: Increased use of beneficial technology by farmers and agents is one of the possible outcomes from the premium reduction plan. The cost savings that may accrue through the use of such technologies will be considered when determining whether to approve the amount of premium discount.

Comment: A farmer commented that several other approved insurance providers have also applied, but have not been granted access and that there seem to be enough approved insurance providers filing for bankruptcy. The commenter stated that it is great that those approved insurance providers that can operate efficiently can be rewarded for doing so.

Response: The commenter is correct that other approved insurance providers applied to offer the premium reduction plan under RMA's existing procedures but were not approved. An important qualification for an approved insurance provider to be able to offer the premium reduction plan is that the approved insurance provider's expenses are less than the A&O subsidy. This qualification exists to ensure that the payment of premium discounts do not stress the financial capabilities of the approved insurance providers. For this reason, premium discounts under the interim rule are paid on actual, not projected, cost savings and RMA will have the opportunity to determine the financial condition of the approved insurance provider before it approves the payment of any premium discount.

Comment: Several agents, interested parties and farmers commented that with the current premium reduction plan program, there is a choice to offer the same insurance with a discounted program and with any program this is strictly voluntary, not a requirement and no strings attached. A commenter stated it is important to offer a discounted insurance program as a way to manage risk in today's environment. A commenter stated that because such a program is strictly the farmer's choice there is no reason to discontinue this program.

Response: RMA agrees that participation in the premium reduction plan by an approved insurance provider is strictly voluntary and that a farmer can freely choose between an approved insurance provider that offers a premium discount and one that does not. RMA further agrees the merits of the premium reduction plan can ultimately be determined by the choices made by approved insurance providers and farmers in a competitive marketplace. In addition, the adoption of the alternative proposal and allowing approved insurance providers to determine when it is appropriate to pay efficiencies out as premium discounts allows the decision to be made based on the prevailing market forces, as is the case in most business settings.

Comment: An agent commented that Crop1 has been a pleasure to work with due to the fact they really understand the business from an agent's perspective. The commenter stated that when the premium reduction plan first came out, agents screamed that the premium reduction plan would come out of commissions and that the agent would be replaced by direct selling over the internet. The commenter stated that this was not the case because Crop1 sent letters and postcards to farmers, increasing the growth of the business. The commenter stated that Crop1 does offer lower commissions, but they have great paper and software. The commenter also stated that if acres or production are reported on time, agents can receive a bonus so Crop1 is making it possible for agents to make, or better, the commissions than with other approved insurance providers.

Response: The premium reduction plan, as regulated through the interim rule, allows the approved insurance provider to structure a range of cost efficiencies within the context of the approved insurance provider's business plan, including those identified by the commenter. RMA agrees with the commenter's assessment that agents are unlikely to be replaced as a result of the implementation of the interim rule. Further, the proposed and interim rules clarify many concepts that were not

included in the existing procedures, including the treatment of bonuses, etc.

Comment: Several agents and farmers commented that agents do not want to sell the premium reduction plan due to the simple fact that they do not want to take a cut in commissions, even though the premium reduction plan would save farmers. Commenters state that this is the only reason for resistance to the premium reduction plan and that the premium reduction plan saves farmers money, which enables them to put more back into the local economy. A commenter stated that if the approved insurance providers really cared about the farmer, there would be more approved insurance providers involved in developing new policies and projects for the good of the farmer, not just the concern to preserve the agent's commission. A commenter states that the farmer wants the discount, but many are apprehensive to participate because of mistruths and intentional misinformation from the agent not willing to offer the discount.

Response: RMA agrees that much of the controversy surrounding the premium reduction plan comes from the perception that agents' commissions will necessarily be reduced and the impact this would have on agents and farmers. RMA cannot voice an opinion with respect to the motives behind the concerns regarding agent commissions but recognizes that the concerns expressed in the comments to the proposed rule are real and legitimate and have been addressed in the interim rule.

RMA would also agree that the benefits a farmer receives from premium discounts would extend to the local economy. However, without more specific information from the commenter, RMA cannot address the allegation that certain agents present mistruths to discourage some farmers from seeking to buy insurance from an approved insurance provider eligible for the opportunity to offer a premium discount.

Comment: An approved insurance provider commented that agent compensation is a large component of the expenses that are incurred in the delivery of crop insurance (currently seventy percent), and thus its reduction is a common, if not universal, component of the premium reduction plan. The commenter stated that just as agents are free to find the approved insurance provider that will enable them to maximize their income, farmers should have a similar option enabling them to maximize profit by reducing their premium cost and that such a choice for the farmer can strengthen the crop insurance delivery system. The commenter stated that without a strong premium reduction plan, the crop insurance industry will simply fall back to the cycle of increasing commissions to gain new business that in the long-run endangers the delivery system.

Response: RMA agrees that agent compensation is the single largest component of approved insurance provider expenses and, consequently, it is a prime candidate for consideration when approved insurance providers seek cost efficiencies. However, the changes to the proposed rule reflected in the interim rule increase the flexibility of approved insurance providers to enable them to make a measured evaluation of their operations and determine the most appropriate places to achieve efficiencies. Such changes include allowing approved insurance providers to select the states in which they participate in the premium reduction plan and allowing the payment of variable premium discounts between states.

RMA also agrees that competition between agents and approved insurance providers as well as price competition for farmers are forces that can strengthen the delivery system. To the extent that the premium reduction plan can provide a competitive incentive to maintain the balance of these forces, RMA would agree that the premium reduction plan may contribute to the long run financial health of the delivery system.

Comment: An agent commented that while a greater number of farmers have not taken advantage of the premium discount, there has been respectable growth in the numbers of farmers who want to take advantage of the discount. The commenters stated that some of the reasons farmers have not taken greater advantage of the premium reduction plan are: (1) They have been insured with and have developed a relationship with their current agent and they trust the agent ''to take care of them,'' (2) Many farmers do not totally understand crop insurance and have relied on their agents deceptive, misinformed or ignorant reasons for discrediting the premium discount; (3) Agents have put their own selfish interests (loss of customers or commissions) ahead of the benefit to farmers and have failed to promote the premium discount with ANY approved insurance provider; and (4) Many farmers buy their crop insurance from their lender and it has either been insinuated that they must buy their insurance from the lender or the farmer feels he is jeopardizing his ability to obtain credit if he doesn't buy crop insurance from them.

Response: RMA would agree that many factors can potentially influence a farmer to choose to buy insurance from an approved insurance provider offering a premium discount or from another approved insurance provider, including some of the factors identified by the commenter. However, since RMA is unaware of the specific ''deceptive, misinformed or ignorant'' reasons cited by the commenter, RMA is unable to respond. Further, lending institutions are prohibited from conditioning their loans on the purchase of crop insurance with them. If the commenter knows of a specific case where this is occurring, it should report it to RMA. Eventually, there will be competition on service and price and it will be up to the farmers to determine which is more valuable to them.

Comment: A few agents commented that RMA will receive an overwhelming, positive response from farmers who would like to see the premium discount continue. The commenter stated that farmers may not so respond because in addition to this being a very busy time of the year for them, they expect their insurance agent to ''take care of them.'' By their very nature, farmers aren't ''letter writers.'' The commenter stated on behalf of every crop insurance customer they all want the premium discount to continue to be made available.

Response: RMA would agree with the commenters that the range of comments received under the proposed rule may not be proportionate to or fully representative of the views of farmers. By the same token, RMA cannot agree with the commenter who states that he or she represents every crop insurance customer in voicing a desire for the premium discount to continue. In any case, the rulemaking process does not represent a referendum on the premium reduction plan but rather the development of a framework that allows participation from all interested parties regarding the implementation of this Congressionally mandated option for approved insurance providers.

Comment: An agent commented that selling the premium reduction plan has resulted in growth to the book of business each year.

Response: RMA recognizes that growth in a book of business may be a result of the price competition created by the premium reduction plan.

Comment: An interested party commented that it supports the premium reduction plan for all crops in all states. The commenter claims it balances the interests of the farmers and the agencies providing it, for the

betterment and furtherance of agriculture.

Response: The rulemaking process does not represent a referendum on the premium reduction plan but rather the development of a framework that allows participation from all interested parties regarding the implementation of this Congressionally mandated option for approved insurance providers. However, RMA agrees that it is in the best interest of the crop insurance program and farmers to require the same premium discount for all crops but as stated above, in response to the significant concerns raised by commenters, RMA has elected to allow approved insurance providers to select states in which to participate in the premium reduction plan and will allow variability of premium discounts between states.

Comment: An agent commented that without price competition, RMA leaves the program open for various types of non-price competition and there have been a lot of crazy plans by approved insurance providers to compete with various non-price service offers (mapping, agronomy services, etc). The commenter asks why RMA does not keep it simple and direct for the customer. The commenter stated that price competition works for everything else (including other insurance, utilities, phone service, airlines and others that are traditionally thought of as natural monopolies) and asks why it isn't good for crop insurance.

Response: The purpose of section 508(e)(3) of the Act was to introduce price competition into the crop insurance program. In response to comments, RMA has developed an interim rule that make the program much simpler to administer. Now approved insurance providers and agents can compete on service and price, maximizing the potential benefits to farmers.

Comment: An interested party stated that they have seen grave changes within the program as well as availability of delivering approved insurance providers. Overpayment of agents in the Midwest and impractical use of the funds available have crippled and dissolved some approved insurance providers as they pursue business with commission payments above the A&O reimbursement. The commenter stated that the approved insurance providers were also tied to underwriting and multiple years of loss in both A&O and underwriting, which also crippled their financials. The commenter stated that agents in the Midwest have been paid above the A&O while other agents in higher loss ratio states have been paid minimally. The commenter stated it is a much greater burden for agents in higher loss ratio areas. The commenter stated that with the current limited plan under the premium reduction plan there still may be disparity, however it is not as great as in the regular system.

Response: The commenter's assessment of certain practices, economic forces, and geographical disparities in the crop insurance delivery system is basically consistent with several studies that investigated the financial failure of American Growers in 2002. RMA also agrees that to the extent that there is disparity in the payment of agent commissions between states, now allowing approved insurance providers to select the states in which they will participate in the premium reduction plan will not acerbate this problem and may reduce some of the disparity.

Comment: An interested party commented that it is not opposed to the concept of the premium reduction plan for crop insurance, but is concerned about the proper and complete implementation of such a program. Full consideration must be given to the impact of a premium reduction plan program on the availability and viability of the delivery and service of crop insurance to America's farmers. If the premium reduction plan is not structured, administered, regulated and implemented with careful thought and planning it could have the unintended result of lower service quality and less effective cost controls for the farmers who rely upon crop insurance protection.

Response: RMA agrees the interim rule must reflect a careful consideration of the viability and service of crop insurance to farmers. Through the rulemaking process, RMA has been able to receive input regarding the impact of the premium reduction plan on agents, farmers, and approved insurance providers, who will be the parties most affected. Further, RMA has carefully considered all comments and structured a program that minimizes the administrative burdens while still protecting the integrity of the program, such as requiring agents and approved insurance providers to comply with all the requirements of the SRA and approved procedures regarding service, loss adjustment, quality control, etc.

Comment: An agent commented that although it opposed the premium reduction plan, it would offer it to stay competitive in the marketplace if it looks like it will become a significant offering.

Response: Under the interim rule, it is expected that all agents and approved insurance providers will assess their business situation to determine whether it is economically feasible to participate in the premium reduction plan. However, even those that choose not to participate in the premium reduction plan will still have the opportunity to compete based on service, if not price. Farmers are the ones who will ultimately determine what is most valuable to them.

Comment: A few agents commented that the timing could be better and asked that the premium reduction plan not be implemented now. A commenter stated that if the premium reduction plan is in the future, all approved insurance providers involved in crop insurance need to be able to provide the exact same product and the industry as a whole needs more time to implement that type of change. With more time and input from everyone involved in this business a fair and equitable policy should be possible.

Response: RMA understands that there may be parties that want to delay implementation of the premium reduction plan but that is not an option. Section 508(e)(3) of the Act requires that RMA give approved insurance providers the opportunity to apply to provide a premium discount. Further, it would be impossible for RMA to structure the premium reduction plan so that approved insurance providers all provide the same product and remain in compliance with the Act. Under section 508(e)(3), premium discounts are based on the efficiencies attained by the approved insurance providers. Since all approved insurance providers operate differently, they would not attain efficiencies in the same manner or in the amount. The interim rule allows flexibility for such difference in business operations.

Further, through this rulemaking process, RMA has provide all interested parties the opportunity to provide input and has carefully considered such input when developing the interim rule.

b. Against the Premium Reduction Plan

Comment: An approved insurance provider commented that the General Accounting Office is conducting an audit of the premium reduction plan to evaluate how the one approved plan is operating and the impact on the nation's farmers and the integrity of the Act. The commenter states that the results of this audit should be reviewed before any final rules are promulgated.

Response: As stated above, section 508(e)(3) of the Act obligates RMA to consider any request by an approved insurance provider to offer a premium discount. If RMA were to postpone

implementation of the interim rule to wait for information from one or more studies, RMA would need to operate the premium reduction plan under existing procedures which the FCIC Board of Directors has determined to be inadequate or revised procedures. Consequently, RMA cannot adopt the suggestion of the commenter to postpone the interim rule.

Further, through this rulemaking process, RMA has been able to obtain comments from all interested parties regarding the impacts of the premium reduction plan and, given the significant number of comments received, has a good understanding of the concerns. In response to these comments, RMA has made significant changes to the proposed rule to make the premium reduction plan much simpler, less burdensome, and less likely to cause any significant market disruptions. In addition, RMA has elected to implement this rule as an interim rule to allow it to collect additional comments so it can better understand, and make adjustments if needed, the impact of the premium reduction plan as contained in the interim rule.

Comment: An interested party suggested that the Board should insist on a contractor review of the existing the premium reduction plan program before implementing any rule. The commenter states that the existing program has no protection against discrimination or adequate disclosure to the Board.

Response: As state above, RMA is obligated by law to operate the premium reduction plan. If RMA were to postpone the interim rule to await information from one or more studies, RMA would need to operate the premium reduction plan under existing procedures which the FCIC Board of Directors has already determined to be inadequate or revised procedures. Consequently, RMA cannot adopt the suggestion of the commenter to postpone the interim rule.

Further, RMA disagrees that the existing program has no protection against discrimination or inadequate disclosure to the Board. As stated above, all approved insurance providers are required to sell insurance to all interested farmers as long as they are eligible. Further, approved insurance providers are required to comply with all anti-discrimination provisions in the SRA. This requirement did not change under the existing premium reduction plan or under the interim rule.

However, RMA acknowledges that the existing program did nothing to change the longstanding practice of allowing agents to only solicit large farmers. However, the interim rule rectifies this matter and requires that the approved insurance provider solicit small, limited resource, women and minority farmers through its marketing plan.

Further, disclosure to the Board under the existing program has been adequate. Crop1 has submitted regular reports to RMA, who provides an update to the Board at every Board meeting. Further, RMA has conducted periodic reviews of Crop1's operations and reported to the Board its findings. In addition, RMA briefed the Board on all new requests to provide premium discounts for the 2005 reinsurance year and sought the Board's input on the proposed and interim rules.

i. Procedural

Comment: A few approved insurance providers commented that the premium reduction plan is providing burdens on the state without providing funding. A commenter states this could raise the issue of state premium taxes. A commenter stated that while the standard of what constitutes ''sufficient implications'' under Executive Order 13132 to warrant consultation with the states is not known nor are the intergovernmental consultation standards set in Executive Order 12372, prior premium reduction plan experience and the requirements of the proposed rule itself create potentially significant burdens on state government—specifically state insurance departments—such that some detailed analysis and potential consultation under these Executive Orders appears warranted. The commenter stated RMA should ask the insurance departments in the states where the premium reduction plan is approved by FCIC for the 2003–2005 crop years whether that program created an ''insignificant'' burden. Furthermore, the proposed rule requires any premium reduction plan-participating approved insurance provider to file its marketing strategy with each state in which the program will be offered ''for its [the state's] review to determine whether the licensing of agents and the conduct of agents in the solicitation and sale of insurance under the proposed premium reduction plan is in accordance with applicable state insurance laws''. The commenter asks where RMA proposes the state is going to get the resources to conduct the above review. This review alone, along with all implementation aspects of the plan and its potentially discriminatory impact both at the agent and consumer level, will undoubtedly constitute a significant impact on state insurance departments and would presumably warrant consultation with the states prior to the implementation of any final rule. The commenter suggested the proposed rule may even need evaluation, contrary to the conclusion reached above, under the Unfunded Mandates Reform Act of 1995.

Response: RMA recognizes that the provisions in the proposed rule that required state approval of the premium reduction plan submissions and marketing plans may have created unnecessary burdens on states. Consequently, these provisions have been removed from the interim rule. However, states remain involved in monitoring market conduct to ensure farmers are not misled but this is not a new burden. States have always been responsible for monitoring such market conduct since they license approved insurance providers and agents. Therefore, there are no unfunded mandates in the interim rule.

Further, with respect to Executive Order 13132, RMA agrees that the premium reduction plan had Federalism implications because it is regulating certain conduct relating to marketing and allowing premium discounts that some states may construe to be illegal rebates. However, the crop insurance program is a national program and there needs to be uniformity in the application of its requirements. In addition, section 4 of that Executive Order authorizes agencies to preempt state law where there is a Federal statute that contains an express preemption provision. As stated above, section 506(l) of the Act is an express preemption provision. Therefore, RMA is authorized to take promulgate regulatory provisions that preempt state law.

With respect to the consultation requirement in Executive Order 13132, RMA maintains contact with the National Association of Insurance Commissioners and actively participates in its crop insurance working group. Through this relationship, RMA is able to consult with the State Departments of Insurance of any actions it proposes to take and obtain the necessary feedback.

Comment: An approved insurance provider commented that it disagreed with RMA's assessment that, with respect to the Regulatory Flexibility Act, the proposed rule will not have a significant economic impact on a substantial number of small entities. The commenter stated that the proposed rule would affect the sales strategies, sales techniques and income of thousands of agents, most of whom qualify as small entities. The commenter stated that since the prime effect of the rule is likely a reduction in

commissions, the effect is likely to be direct and immediate.

Response: RMA disagrees with the comment. As stated above, the purpose of the premium reduction plan is to provide the potential for greater benefits to farmers, agents and approved insurance providers through free market competition. As stated above, participation in the premium reduction plan is strictly voluntary. Therefore, if agents feel that they would be harmed by participating, they can elect not to.

In addition, neither the proposed nor the interim rule mandates that agent commissions be reduced. Commission rates are freely negotiated between the agent and the approved insurance provider. In addition, as stated above, approved insurance providers have an incentive to pay agents a fair commission and only the agents and approved insurance providers can be the judge of that. Further, as stated above, RMA has revised the proposed rule to minimize the potential for market disruption. Therefore, the interim rule will only have a significant economic impact on the agent if the agent elects to receive such impact. This is a matter solely up to the agent. Therefore, RMA was correct in its assessment that no Regulatory Flexibility Act analysis is required.

ii. Current

Comment: Several agents and interested parties commented that it has taken many years to develop the current delivery system of providing insurance to the farmers. That was accomplished in part with the partnership of independent agents across rural America. Commenters state that under the current system the government receives an efficient and effective delivery system and the farmer receives a good product at a fair price with equal access to the approved insurance providers. A commenter stated that farmers like it and approved insurance providers and agents have been knowledgeable and expert distributors. A commenter states that no farmer has ever complained that premiums are too high. A commenter stated that when used as a risk management tool, crop insurance works well. A commenter states that the program has made many improvements over the years, new products and new crops have been added, and participation and value to the farmer has continued to improve.

Response: RMA generally agrees that the current crop insurance program provides a system that can claim many successes in helping farmers protect their livelihood and demonstrates a successful partnership between the private sector, including approved insurance providers and their agents, and the Federal government. RMA agrees that crop insurance appears to be working well for many farmers and has steadily improved, as evidenced by growing participation at increasing coverage levels. RMA also recognizes the vital role that the agent plays in providing information and service to farmers in the current delivery system.

RMA strongly disagrees with the claim that no farmer has ever complained that crop insurance premiums are too high. Whenever RMA meets directly with farmers, they often argue that crop insurance premiums are too high and are a major concern.

Notwithstanding these concerns, the purpose of the premium reduction plan is to improve the crop insurance program by allowing price competition. The assumption is that the crop insurance industry will respond as have most competitive industries with a better product, better service, at a better price.

Further, as stated above, RMA has revised the proposed rule to minimize potential market disruptions so that the crop insurance program can continue to provide valuable risk management to farmers long into the future.

Comment: Several agents and interested parties commented that when crop insurance was solely a government project 72 cents of all premium was for administration and the balance for losses. As private enterprises, only 23.5 cents is paid for administration. A commenter states that this shows the private enterprise should not be kicked out of the current program. You get what you pay for, and cheap is not always the answer.

Response: RMA agrees that the private sector has a well established and valuable role in the delivery of Federal crop insurance. However, RMA disagrees with the implication of the comment that the interim rule somehow seeks to replace the private sector role. On the contrary, the stated objective of the premium reduction plan is to foster price competition in the program. The whole premise of price competition is to be able to provide the same product or service for less money.

Further, cheap is not the goal. As stated above, as with all competition in the business world, the goal is to allow approved insurance providers and agents to provide a better product, better service, at a better price.

iii. Program Harm

Comment: Several approved insurance providers, farmers, interested parties and agents commented that the Crop Insurance Reform Act of 2000 [Agricultural Risk Protection Act of 2000] helped the American farmer out the most by giving them a higher subsidy for their premium. A commenter stated that since the 2000 Reform Act; the policy count has gone upward every year. A commenter stated that the legislation to allow for the premium reduction plans was approved at a time (1993) [1994] when there were approximately sixty four (64), and there are now seventeen (17) approved insurance providers, when premium subsidies to farmers were much lower, and the subsidy for administrative and operation expenses to approved insurance providers was approximately thirty-three percent (33%) higher. The intent of the legislation was to encourage approved insurance providers to develop efficiencies in their operations and pass the savings on to the farmers in the form of reduced premiums for them and the 2000 Reform Act accomplished this goal and approved insurance providers have already had to reduce their costs.

Response: RMA agrees that the additional premium subsidy in the Agricultural Risk Protection Act of 2000 contributed to an increase in crop insurance participation. RMA also agrees that the premium reduction plan was legislated when there were more approved insurance providers, lower premium subsidies, and a higher A&O subsidy rate. However, the primary stated objective of the premium reduction plan, as reflected in the legislative history of section 508(e)(3) of the Act, was to foster price competition in the crop insurance marketplace. This objective has yet to be accomplished and the presumption is that such price competition will further benefit farmers because it will allow approved insurance providers and agents now to compete on service and price, which can benefit the farmer and the crop insurance program.

Comment: Several agents and interested parties commented that if the premium reduction plan program is not rescinded and stopped, it will cause the current crop insurance program to fail in its ultimate goal to replace disaster programs. A commenter stated that ad hoc disaster programs would be needed on even a greater scale. A commenter stated that crop insurance has the ability to eliminate ad hoc disaster and that the current farm program, with loan deficiency payments, counter-cyclical payments, fixed-direct payments, etc., is less productive and provides less true protection to the American farmer than does the crop insurance program.

Response: RMA is unsure of why the commenters predict that the premium reduction plan will cause the failure of crop insurance to replace ad hoc disaster aid and that ad hoc disaster aid demands will increase as a result of the premium reduction plan and the commenters provide no information to support these predictions. In fact, the premium reduction plan does not affect the coverage provided to the farmer. Therefore, it should not have any impact on the need for ad hoc disaster programs.

If the commenters are premising their statements on the fact that agent commissions will decrease to the point that agents can no longer serve farmers, who will then have no access to crop insurance and require ad hoc disaster programs, these issues have been addressed above. As with all competition, prices will only change by an amount the market will bear. This includes agent commissions. Approved insurance providers have the incentive to retain agents to maximize their potential underwriting gains and to service their customers. Therefore, approved insurance providers and agents will negotiate a fair commission rate. Further, as stated above, RMA has built in safeguards into the interim rule to ensure that farmers receive the required level of service. In addition, adoption of the alternative proposal will slow down price competition and allow it to proceed in an orderly, managed manner, without market disruptions.

With respect to the benefits of other farm programs, such programs are outside the scope of this rule and RMA is not in any position to comment.

Comment: Several agents commented that it is common knowledge in the industry today that every approved insurance provider, with the exception of one, opposes any premium reduction plan. However, these approved insurance providers must develop a plan in order to compete and hold their share of business. A commenter states this will ultimately require the approved insurance providers to cut cost, which will lead to less service, less value, and possibly less products available to the farmer regardless of size.

Response: RMA acknowledges that the commenters may be correct in asserting that there may be resistance among approved insurance providers with respect to the premium reduction plan concept. However, Congress has enacted section 508(e)(3) and RMA must respond to approved insurance providers who wish to take advantage of this provision, which does benefit farmers.

RMA does not agree with the implication that the introduction of cost efficiencies by approved insurance providers will necessarily lead to a deterioration in service, less value, or fewer products available to farmers. The purpose of price competition is to provide a framework whereby the participants in the market will try to provide a better product, better service, for less money. However, to ensure that service is not reduced, RMA has added provisions to provide sanctions in the event service fails to comply with the requirements of the SRA and approved procedures. In addition, the requirement to sell all insurance products offered by RMA contained in the SRA still applies. Further, adoption of the alternative proposal will allow price competition to proceed in an orderly, managed manner, without market disruptions.

Comment: A few agents and interested parties commented that, nationwide, the program would not be as profitable. A commenter stated this would certainly reduce the financial strength of the industry and affect the ability of the RMA to meet its intended goal of a 1.075 national loss ratio. A commenter stated it may actually result in an increase in premiums.

Response: It is unclear to RMA why the premium reduction plan will adversely affect expected underwriting gains of approved insurance providers, RMA's ability to maintain a national loss ratio of 1.075, or crop insurance premium rates. Any premium discounts are paid through savings achieved in the operations of the approved insurance providers. The amount of premium paid to cover losses and the potential underwriting gains of the approved insurance provider will remain unchanged. Therefore, there should not be any negative impact on the financial strength of the industry, the ability of RMA to hit its targeted program loss ratio, or premium rates.

Comment: Many agents, approved insurance providers and other interested parties commented that they opposed the premium reduction plan. Commenters stated that the premium reduction plan will cause significant damage to the federal crop insurance program and harm farmers, agents and approved insurance providers, and the credibility and delivery of the program. Commenters state that there are too many disruptive problems with the premium reduction plan at a time when the program is more complex, with more products and less income. Commenters stated that the federal crop insurance program is one of the most successful public-private partnerships. Commenters state that while there are limited tangible economic benefits associated with the premium reduction plan implementation, these benefits are small relative to the risks to farmers, and the political and economic costs that will be required to achieve them. Commenters state that the premium reduction plan risks the most fundamental principle of crop insurance—universal access by all farmers, regardless of size.

Response: RMA disagrees with the commenters' assessment that the premium reduction plan will cause significant damage to the crop insurance program; harm farmers, agents, and approved insurance providers; and impair program delivery. The crop insurance industry is not the first to have price competition and for the most part, industries thrive under such competition and there is no reason to believe the crop insurance program would respond any differently. Further, as stated above, RMA has built in safeguards into the interim rule to ensure that farmers receive the required level of service. In addition, adoption of the alternative proposal will allow price competition to proceed in an orderly, managed manner, without market disruptions.

Commenters also point to the complexity of the current program, the success of the public/private partnership; limited benefits of the premium reduction plan relative to risks; and the threat to universal access by all farmers as the principle factors supporting this assessment.

RMA agrees that the current program is complex but, as stated by commenters, approved insurance providers and agents are doing a superior job in delivering that program to farmers. Further, the complexity of the program will remain unchanged under the interim rule. In addition, as stated above, it is up to farmers to determine whether the premium reduction plan will benefit them. Under the premium reduction plan, farmers will be able to determine what is the greatest value to them, service or price, or a combination of the two. Lastly, as stated above, RMA has taken steps to ensure universal access to the premium reduction plan by requiring approved insurance providers to specifically market it to small, limited resource, women and minority farmers.

Comment: Several interested parties commented that the premium reduction plan would disrupt the delivery of crop insurance to many farmers and this would negatively impact many banks that strongly urge farmers to purchase crop insurance as a backstop to help

farmers repay their loans in the event of a disaster or significant loss.

Response: RMA assumes that the commenters are referring to the possibility of reductions in agent commissions causing agents to leave the business and farmers to be left without insurance. These issues have been addressed above. As with all competition, prices will only change by an amount the market will bear. This includes agent commissions. Approved insurance providers have the incentive to retain agents to maximize their potential underwriting gains and to service their customers. Therefore, approved insurance providers and agents will negotiate a fair commission rate. Further, as stated above, RMA has built safeguards into the interim rule to ensure that farmers receive the required level of service. In addition, adoption of the alternative proposal will allow price competition to proceed in an orderly, managed manner, without market disruptions. Therefore, the premium reduction plan should not adversely impact banks or other lenders.

Comment: A few interested parties and agents commented that the federal crop insurance program has been highly successful in the past primarily because of the larger subsidies passed on to its customers the last few years.

Response: RMA agrees that larger subsidies provided under the Agricultural Risk Protection Act of 2000 resulted in farmer participation at higher levels of coverage. However, as stated above, the primary purpose of the premium reduction plan is not to increase participation, even though that may be one of the effects. The purpose is to stimulate price competition so that farmers receive the benefits of competition for both price and service.

iv. Alternative cost cutting

Comment: An interested party stated that if RMA is trying to regulate what the agents are getting paid, then RMA should put in the SRA what the maximum all approved insurance providers can pay an agent. The commenter stated that by using a ceiling on what all approved insurance providers can pay an agent will almost guarantee no more bankrupt approved insurance providers.

Response: The purpose of the premium reduction plan is not to regulate agent commissions. An agent's compensation is freely negotiated between an agent and an approved insurance provider and nothing in the proposed or interim rule would change or preclude it. Further, approved insurance providers are in the best position to examine their operations and determine the appropriate amount of commission and other expenses. Moreover, approved insurance providers can fail because of any number of factors, possible excess agent compensation being only one.

Comment: An agent commented that if RMA wants to save money, get rid of the Crop Revenue Coverage or Revenue Assurance as they are almost identical. The commenter stated RMA could save millions in not having to support both systems.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond. However, RMA has considered such cost saving measures, agrees with the commenter, and has announced its intent to merge the CRC and RA policies.

Comment: A farmer commented the agriculture budget is roughly ½ of 1 percent of the Federal Budget but the agricultural industry is responsible for 15 percent of the nation's gross domestic product, and provides for 25 million jobs. The commenter stated the President needs to increase the subsidies by 20% to give all farmers better coverage at the higher levels at a lower rate.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: Several approved insurance providers and interested parties commented that premium reduction plan should be implemented only with the strictest caution only for those economically viable approved insurance providers who have already demonstrated the capacity to fairly serve all farmers. Commenters stated it seems somewhat risky to be offering reduced premiums through a start up approved insurance provider in a weak financial condition. If a widespread disaster were to occur, the approved insurance provider may not survive and there may be problems with everyone getting paid without a considerable infusion of cash from the federal government.

Response: There are guidelines in place to ensure the financial stability of approved insurance providers through the approval process when an approved insurance provider submits an application for an SRA or its annual Plan of Operations. Nothing in the premium reduction plan changes these requirements. Therefore, no approved insurance provider that was not economically viable would be approved for a SRA, much less be eligible to participate in the premium reduction plan.

However, RMA does share the concern that even though approved insurance providers may have achieved efficiencies, they may also sustain significant underwriting losses in years where there are multiple widespread disasters. The payment of premium discounts under such circumstances could stress the financial condition of the approved insurance provider. RMA has addressed this issue in the interim rule in two ways. The first is to only require approved insurance providers to pay premium discounts if the approved insurance provider makes a request to pay such discounts and it is approved. Therefore, if the approved insurance provider determines it is not in the financial position to pay the premium discount, it could not request approval to pay any discounts. The second is to give RMA the authority to deny the payment of a premium discount if there is evidence it may weaken the financial condition of the approved insurance provider.

Comment: An agent commented that RMA should not offer both the existing multi-peril program and the proposed premium reduction plan. The commenter states there is no reason to complicate crop insurance more than it already is. The commenter suggested finding a level of subsidy that keeps the insurance affordable to the farmers and still provides a fair return to the approved insurance providers and the independent agents that write for them.

Response: The commenter appears to assume that the premium reduction plan will complicate the crop insurance policy. However, this is not the case. The obligations of the parties and the coverage remain the same under the policy regardless of whether the premium reduction plan is in effect. Further the requirements regarding service, loss adjustment, etc. remain the same. The premium reduction plan will simply provide the farmer with the opportunity to receive a payment if the approved insurance provider achieves the requisite level of cost savings for the reinsurance year.

With respect to the issue of subsidy, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: A farmer commented that the problem with the crop insurance program is not the amount of subsidies, it is the low yields.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: An agent commented that any farmer that has any quantity of land carries crop insurance, and has done so for the past 15–20 years. The reason there are ''large'' farmers is that they know the programs inside and out. The

commenter stated that these large farmers form new ''entities'' and move one or two extremely high yielding pieces (APH) of ground into these new ''entities'' and then ''add land to an existing unit'' and transfer their high yielding ''new entity'' land to all the ground they just took away from their neighbors. The commenter claims this is one of the processes destroying family farms. Large farmers know the programs inside and out, and will do anything and everything to have the advantage in our so-called free market. The commenter claims this has crippled the concept of free enterprise by a program designed to do good. Over the last ten years, land prices have tripled and cash rents have also tripled while small farmers continue to go out of business. Meanwhile the taxpayer funds an average of 55% of the crop premium. Adding an additional 3%–5%–8% discount to this program will again be greeted by smiles from the people that benefit the most—large farmers. The commenter stated that if RMA wants to save money and positively impact agriculture, change the practice that only large farmers use—multiple entities. These educated farmers will find ways to circumvent changes unless it is plain and simple.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: Several agents commented that the premium reduction plan is being used to cut program costs. A commenter stated to save costs, either the farmer should pay more premium or the approved insurance providers receive less A&O, which will result in agents getting paid less commission. A commenter stated this goal was already met when A&O was reduced in the 2005 SRA and the large reduction in A&O that has occurred between 1994 and today. The commenter stated that if savings is the goal, keep the premiums the same for all approved insurance providers in all states and cut the reimbursement and cut the paperwork requirements. A commenter stated that if RMA wants to cut back in spending get rid of all the subsidy programs and force all farmers to buy crop insurance if they want any government assistance or take the farm program payments and put them into the crop insurance program. This would tell farmers they can protect themselves if a disaster happens but it is their choice.

Response: The comments assume that RMA is seeking to reduce program costs through the interim rule. This is not the case. The premium reduction plan is intended to allow approved insurance providers to compete on the basis of price. Nothing in the premium reduction plan will decrease the overall costs to the crop insurance program because the payment of A&O subsidy will remain the same, or could actually increase if additional levels of coverage were purchased.

With respect to the comments regarding other subsidy programs, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: Several approved insurance providers and agents commented that farmers do not need further reductions to the highly subsided premiums. A commenter stated that if it is the intent of Congress to further reduce premiums to farmers then it is best to increase subsidies to all farmers uniformly. The commenter stated that any attempt to reduce farmer premium through premium discount plans which cannot reach all farmers in an equitable manner should be abolished.

Response: As stated above, section 508(e)(3) of the Act obligates RMA to consider requests by approved insurance providers to provide premium discounts. This obligation was not changed, even when Congress substantially increased the premium subsidy rates. Therefore, RMA has no choice but to implement section 508(e)(3) as written.

With respect to the issue of raising all premium subsidies equally, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Further, RMA does not agree with the assumption that the premium reduction plan cannot reach all farmers in an equitable manner. As stated above, the interim rule provides specific protections against unfair discrimination and requirements for broad and equitable marketing of the premium reduction plan.

Comment: Many agents, approved insurance providers, farmers and interested parties suggested that if RMA wants to increase participation in the program it should increase the percentage of subsidy for all farmers. This would have the same effect to the farmer but would not drive out of business the independent agency. A commenter suggested that it would like to see the subsidies around 60% to help the younger farmers protect their investments.

Response: As stated above, the primary purpose of the premium reduction plan is not to increase participation, although that may be an effect. The primary purpose is to introduce price competition into the crop insurance program so that farmers can benefit from the competition for both price and service.

With respect to the issue of raising all premium subsidies for all farmers, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: An agent suggested that when balancing budget needs and approved insurance provider stability, it made more sense just to reduce A&O and commissions 3.5% and leave crop insurance the same price with less need for additional subsidies.

Response: The comment assumes that the purpose of the premium reduction plan is to balance the budget. This is not the case. As stated above, the primary purpose of the premium reduction plan is to introduce price competition into the crop insurance program so that farmers can benefit from the competition for both price and service. In addition, RMA does not regulate agent commissions. Such commissions are determined by free market negotiations between the agent and approved insurance provider.

Comment: Several agents commented that it would make sense for discounts be based on loss ratios. A commenter stated that any other lines of insurance operate in this fashion but due to the fear of discrimination federal crop insurance can not operate in this way. This is unfortunate.

Response: The commenter is correct that one of the fundamental principles of crop insurance is equal access and equitable treatment. However, crop insurance does operate like other lines of insurance in that the higher the risk of loss, the higher the premium rate, and vice versa. Therefore, in a sense, farmers with good loss ratios do receive a ''discount'' in the form of lower premium rates. However, in the context of the premium reduction plan, there is no rational basis to tie such discounts to loss ratios because, unlike other lines of insurance, the cost savings are not achieved through underwriting gains. The cost savings are from operational structures or changes that allow the approved insurance provider to operate for less that the A&O subsidy it receives.

Comment: An agent suggested that farmers be given a 1% discount for every year they've been in the program, up to 10 years, without breaking continuity. The commenter suggested making the discount standard and available to all farmers.

Response: With respect to the issue of giving all farmers a discount based on the length of time participating in the program, this comment is beyond the

scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: An interested party commented that deliberation and implementation of the premium reduction plan requires an allocation of political and economic resources by FCIC, RMA, private industry, and other interested parties. The commenter states that, in lieu of the premium reduction plan, these groups could be working on an alternative set of program endeavors, which have a much greater potential for social return and overall economic benefit to the program, such as successful implementation of the Combo Policy.

Response: As stated above, RMA is obligated to consider requests by approved insurance providers to offer premium discounts in accordance with section 508(e)(3) of the Act. RMA has no choice but to implement the premium reduction plan.

Comment: Several agents and interested parties commented that RMA should just decrease premium rates. A commenter stated that this new rule is ultimately saying that rates are too high and RMA can afford to step back the rates in certain cases. A commenter stated that this would allow real savings to every farmer. Less premium is generated so less commission is paid. A commenter stated that once again, RMA is choosing to make this much harder than it has to be and if RMA truly cared about whether or not this was a good idea, why have they not asked agents directly for input.

Response: This comment assumes that the purpose of the premium reduction plan is to reduce premium rates and this is not correct. Premium rates must be sufficient to cover anticipated losses and a reasonable reserve. The premium discount plan is based on whether approved insurance providers can deliver the crop insurance program for less than the A&O subsidy it receives and will not affect the premium rates. These cost savings can be passed from the approved insurance provider to the farmers to help defray the cost of the premium normally paid by farmers, but premium rates themselves are unaffected. Therefore, RMA cannot reduce premium rates under the premium reduction plan.

Further, through this rulemaking process, RMA has sought the input of agents and has carefully considered their comments when developing the interim rule.

Comment: A few agents commented that the current program is a wonderful program, and has worked very well. The commenter stated that if the program needs changing it suggests something as simple as acreage reporting date for crop insurance to coincide with acreage reporting deadline at the local FSA office. Another commenter suggested that FSA and RMA remove duplicate reporting. The commenter stated that this would result in program savings, which could be passed on to the farmer as reduced premiums.

Response: As stated above, the purpose of the premium reduction plan is to introduce price competition to allow farmers to benefit from both price and service competition. As stated above, RMA is obligated to consider requests by approved insurance providers to offer premium discounts. Premium discounts can only be paid if the approved insurance provider's costs to deliver the program are less than its A&O subsidy. In fact, the cost saving measures discussed by the commenter can be the foundation for the cost savings under the premium reduction plan. However, while RMA is always looking for ways to simplify the program and reduce costs to approved insurance providers, it cannot simply pass those savings on to farmers as reduced premiums. Premium rates must be sufficient to cover anticipated losses and a reasonable reserve and are not affected by the premium reduction plan.

Comment: A few agents and interested parties commented that if cuts need to be made, eliminating premium subsidies to large corporate farmers would do more for the economic stability of the farmers the premium reduction plans are supposed to help.

Response: This comment assumes that the premium reduction plan is intended to cut costs and that it can seek other methods for accomplishing this objective. This is not the case. As stated above, the purpose of the premium reduction plan is to introduce price competition to allow farmers to benefit from both price and service competition.

With respect to the issue of eliminating premium subsidies to large corporate farmers, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: An interested party commented that this plan has no value at all unless it helps the small farmers. The commenter states that large agribusiness should be ineligible for this program because it is clear taxpayers have been funding huge agribusiness conglomerates and American citizens should not be insuring them at all. The commenter recommends RMA restructure this program to help small poor farm families and downsize the rest.

Response: RMA agrees that the premium reduction plan should help small farmers. To accomplish this goal, the interim rule will require that approved insurance providers specifically market the premium reduction plan to small, limited resource, women and minority farmers. This should ensure that all farmers, both large and small, have equal opportunity for premium discounts.

With respect to the issue of not allowing large conglomerates to participate in the crop insurance program, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: Many agents and interested parties and an approved insurance provider commented that the crop insurance program is a complex program that requires extensive time with each customer if all available options are to be adequately explained and that such requirements continue to increase. They state it takes the same amount of time to sell a small account as it does with the larger one. The commenters stated that if all of the larger accounts are switched to the discount plan, then agents will barely survive on the large accounts and will lose money on the smaller accounts, which they already do, meaning that overall they would be losing money and would have to go out of business due to a marketing scheme. The commenters state that they are able to serve small farmers partly because the larger farmers' policies help with the low or non-existent profits from the smaller farmers. They also claim that if the premium reduction plan becomes a reality, they do not know how they will be able to take care of everyone and provide the service they have done in the past. Commenters claim that this flies in the face of what Congress intended when it passed the Agricultural Risk Protection Act of 2000.

Response: RMA recognizes that, because servicing a policy by an agent entails a relatively large fixed cost, certain small policies must currently be serviced at a loss to the agent and the approved insurance provider and that larger policyholders tend to subsidize these small policies. This condition currently exists in the crop insurance program and is not the result of the premium reduction plan.

Further, the commenters predict that reductions in agent commission will make it uneconomical to service small policies. As stated above, it is unlikely that there will be any reduction in service to any farmer, including small or high risk farmers, from the requirements

in the SRA and approved procedures. Approved insurance providers are not going to pay a commission so low that selling crop insurance is no longer economically viable for the agent and risk them going out of business. This may result in approved insurance providers not having sufficient agents to properly service their policyholders. In addition, approved insurance providers are not going to risk losing the agent or their book of business to a competitor thereby decreasing the potential for underwriting gains. The marketplace will determine the fair and equitable commission for the agent.

In addition, RMA has taken steps to ensure that service to small farmers is available and is not reduced. One step is to clarify the requirements regarding service in the interim rule. Another is to specifically require that approved insurance providers develop and implement a marketing plan designed to reach small, limited resource, women and minority farmers. Provisions have also been added to allow farmers to complain directly to RMA if they feel they have been denied access to the premium reduction plan or have received reduced service. In addition, failure to comply with either the service or marketing requirements could result in the imposition of significant sanctions under the SRA or the interim rule against the approved insurance provider and agent.

Comment: An interested party commented that RMA was incorrect when it made statements that it is compelled to offer the premium reduction plan unless Congress passes a law instructing them otherwise. The commenter states that section 508(e)(3) of the Act is not in a vacuum and RMA has no authority to implement a program that is contrary to the other requirements of the law and regulation. The commenter also suggests that RMA has shown bias and has determined it will ignore the many issues and legal deficiencies raised by the comments in violation of the Administrative Procedures Act.

Response: The commenter states that RMA is not obligated to offer the premium reduction plans because it would be contrary to the other requirements of the law and regulation. However, the commenter fails to identify the laws or regulations to which it is referring. Therefore, RMA is unsure of how to respond except to state that section 508(e)(3) of the Act states that if an approved insurance provider can deliver the program from less that its A&O subsidy it may request the authority to offer a premium discount. This is not a provision that gives RMA the authority of whether to implement the provision or not. It gives the right to make application to the approved insurance providers.

RMA is also unsure of the basis for the commenter's allegations that RMA has shown bias and will ignore the issues raised by the commenters, in violation of the Administrative Procedure Act. In fact, RMA has carefully considered all the comments received and made numerous, significant changes to the proposed rule as outlined in this Notice.

Comment: An agent commented that it would be better for RMA to help the agent by dissolving illegal cooperatives and those that are fraudulently selling crop insurance than by proceeding with the premium reduction plan.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: An agent asked who is the backbone behind the premium reduction plan—large approved insurance providers that pay their staff little to nothing thus creating a profit for themselves. The commenter asked what they are going to propose when they have driven out all the agents that could no longer hold on to their agencies and they have all the farmers insured under the premium reduction plan. The commenter states that the way crop insurance has been for the last two decades will become very attractive to them at that point and they will need the extra commission dollars at that point because they have accomplished what they have set out to do.

Response: As stated above, it is unlikely that there will be mass exodus of agents from the program as a result of the premium reduction plan. Approved insurance providers are not going to pay a commission so low that selling crop insurance is no longer economically viable for the agent and risk their going out of business. This may result in approved insurance providers not having sufficient agents to properly service their policyholders. In addition, approved insurance providers are not going to risk losing the agent or their book of business to a competitor thereby decreasing the potential for underwriting gains. Further, approved insurance providers are not going to risk the possibility that they will have insufficient agents to service the business as required under the SRA and approved procedures.

It is generally acknowledged that agents are a necessity in the crop insurance program and, because of this, the marketplace will determine the fair and equitable commission for the agent.

Comment: Several agents and interested parties commented that it would be wise for RMA to spend a little more time investigating some lending institutions and other entities that offer rebates to loan customers if they will move their crop insurance to the bank's insurance agent. This is illegal. The commenter states that the premium reduction plan will create the same problem. Some farmers will be offered the plan and some will not and that this is also illegal. A commenter stated that there are a lot of cases where customers of these businesses when approached for their crop insurance say they can't help but feel obligated since they are dependent on these businesses in order to run their farming operations. In some case these farmers are being told they will have to place their insurance with them in order to get a crop loan.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond. However, if the commenter has specific information regarding such practices, it should notify RMA.

Comment: An agent commented that the rebating done by cooperative and trade associations is what was authorized or previously approved and that state approval is required but seldom provided.

Response: RMA is unsure of what the commenter is referring to since rebating by cooperatives and trade associations are not referred to anywhere in section 508(e)(3) of the Act. It is possible that the commenter is referring to section 508(b)(5) of the Act, which does authorize the payment or all or a part of the premium by cooperative or trade associations. However, that provision is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: Many agents and interested parties commented that RMA outlines 9 pages of historical problems with the premium reduction plan program, but the 4 pages of rules simply do not adequately address them. Commenters stated that RMA should seek additional comments and not approve any premium reduction plan applications. Commenters also state that the premium reduction plan should be shelved. A commenter states that there is precedence because RMA did it with the 1999 proposes rule.

Response: RMA agrees that the proposed rule did not address all the concerns raised by RMA in the preamble to the proposed rule. However, through this rulemaking process, RMA has been able to consider these problems and the concerns of the interested parties and has developed an interim rule that adequately addresses

them. The premium reduction plan under the interim rule is simpler, less burdensome, verifiable, is less likely to cause market disruptions, is less likely to adversely impact the financial condition of the approved insurance providers, and guarantees access by all farmers. For this reason, even if RMA could, there is no reason to shelve the premium reduction plan. In addition, although RMA received a considerable number of comments to the proposed rule, RMA acknowledges that it may want additional input and, therefore, has elected to publish this rule as an interim rule in order to obtain more comments as RMA begins the process of implementing this regulation.

Further, although RMA never published a final rule in 1999, the premium reduction plan was not shelved. RMA determined that the Act permitted it to implement the program through procedures. As soon as the first application for the premium reduction plan was received, such procedures were implemented.

Comment: A few agents commented that in order to keep up with the daily changes, the agent looks at the RMA website on a daily basis and did not see any mention about the new premium reduction plan and the comment period that ends on 4/25/05. The commenter states it did not know about this proposed plan until it received the Big ''I'' Agent News Update dated 4/14/05 and then an e-mail from Rain & Hail dated 4/20/05. The commenter asks why the notice of the New Crop Insurance Premium Reduction Plan and the comment period was not put on the RMA Web Site and was the intention to pass this new plan and not let crop insurance agents know about it. An agent also commented that there is no agent representation on the Board so RMA does not know all the facts.

Response: An announcement regarding the proposed rule was posted on the RMA website on February 24, 2005, the same day the proposed rule was published in the **Federal Register**. This announcement was prominently displayed on the front page of the website for every day of the public comment period through April 25, 2005. Even though it is only required to publish noticed of proposed rulemaking through the **Federal Register**, RMA announced the proposed rule on its website to ensure that interested parties had notice and an opportunity to comment. The overwhelming number of respondents confirms that this effort was successful.

Although no agent is currently serving on the FCIC Board, an agent has served in the past. Further, RMA is able to know the facts of the premium reduction plan as it relates to agents and to otherwise obtain the perspective of agents through the many comments provided by agents to the proposed rule.

Comment: An interested party commented that the Board makes all kinds of spending decisions on American taxpayers backs without letting American taxpayers know or have any input on any of this excessive bureaucratic boondoggle spending.

Response: The premium reduction plan is not a spending decision determined by the Board. Further, it is the approved insurance providers that would be paying for any premium discount and even if approved insurance providers did not pay a premium discount, it could still take whatever action it wanted to cut costs as long as it still complied with all requirements of the SRA and approved procedures and keep whatever savings accrued.

In addition, the public was informed of the proposed rule and provided an opportunity to comment. Such comments were considered when the interim rule was developed. Therefore, the public did have input.

Comment: An agent commented that farmers rely on crop insurance and reducing subsidies will set farming back in time. The commenter states that with products like Crop Revenue Coverage and Revenue Assurance, the program is state of the art. The commenter states that farmers are better managers today and one reason is crop insurance.

Response: The commenter has the mistaken assumption that the premium reduction plan will reduce subsidies. In fact, the premium reduction plan is intended to benefit the farmer through the payment of a premium discount.

Comment: Several agents asked what the intent is of the premium reduction plan, to save money for the government, make crop insurance delivery more efficient or force more agents out of the business of delivering crop insurance.

Response: As stated above, the intent of the premium reduction plan is to introduce price competition to allow farmers to benefit from competition on both price and service. The government does not save money through the premium reduction plan. The amount of A&O subsidy paid to the approved insurance provider and premium subsidy paid on behalf of farmers remains the same regardless of whether there is a premium reduction plan in place or not. Further, the goal is not to drive agents out of the business. As stated above, RMA is in agreement regarding the importance of agents to the crop insurance program and has attempted to minimize any market disruptions as a result of potentially widespread implementation of the premium reduction plan.

Comment: A few interested parties and agents stated that hundreds of claims were paid on soybeans in Iowa without any complaints to Congress. The commenter stated that this was amazing for a government program.

Response: RMA assumes that the context of this comment is that the claims were serviced by the approved insurance provider currently authorized to offer the premium reduction plan. As stated above, the requirements to provide service, loss adjustment, etc., contained in the SRA and approved procedures continues to apply under the premium reduction plan and approved insurance providers and agents could be subject to sanctions it they failed to comply with such requirements.

Comment: A farmer commented that the new rules to protect against fraud are overkill. The commenter stated that most farmers use the program for risk management and realize the need to protect program integrity. The commenter stated that it is only a few who abuse the system and the approved insurance providers are better equipped to detect them than is RMA.

Response: This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Comment: An agent commented that a premium discount has been around since the early 1980's for multi-year policies and good loss experience. The commenter stated that no matter who the farmer insured with, it got the reduction.

Response: The commenter is apparently referring to the fact that a policyholder's rates already reflect certain risk factors, including whether the farmer's production history has been maintained and whether losses have occurred. This means the higher the risk, the higher the premium. Nothing in the interim rule would change this system. The premium discount paid under the premium reduction plan is based on the efficiencies of the approved insurance provider, not the risk associated with the farmer.

Comment: Several agents commented that they saw a letter from Crop1 asking everyone to write a letter to show they want the premium reduction plan and if the farmer forwards a copy of the letter to RMA, the farmer would receive free leather gloves. The commenters asked if Crop1 is rebating as well as offering a discount to large farmers. A commenter stated that this was a perversion of the rulemaking process.

Response: RMA has investigated this case. The precise offer was if the commenter sent a copy of the comment to Crop1, it would receive a set of leather gloves. Nothing in the law prevents an approved insurance provider from offering an item of nominal value to its clients to obtain copies of comments filed with RMA regarding this regulation. It is assumed that such an offer would encourage some to make favorable comments to RMA. However, since the proposed rule was not a referendum, the positive votes did not matter. RMA considered all the comments to determine how it could improve the premium reduction plan and believes the interim rule accomplishes this goal.

Comment: Several agents and interested parties commented that the premium reduction plan was someone's idea to gain an unfair marketing advantage so an approved insurance provider could quickly grow. This approved insurance provider could not have had the impact it did without some marketing advantage such as price.

Response: As stated above, the very purpose of the premium reduction plan is to introduce the concept of price competition into the crop insurance program. Under the premium reduction plan all approved insurance providers have the opportunity to compete on price as long as their A&O costs for the reinsurance year are below the A&O subsidy they receive. Since all approved insurance providers are subject to the same standard, there is no unfair marketing advantage. The whole premise of price competition is to be able to provide the same product or service for less money.

Comment: A few agents commented that many agents selling the premium reduction plan now do not carry errors and omissions insurance and many selling do not have a license to market crop insurance as is required by Independent Insurance Agents.

Response: Any approved insurance provider participating in the premium reduction plan, including Crop1, must first meet all requirements of the Act and the SRA, including that all agents must be properly licensed to offer crop insurance in the states in which they write. There is no requirement in the Act, SRA or approved procedures that would require an agent to carry E&O insurance. If the commenter has specific information regarding an agent that is writing crop insurance policies in a state without a license, such information should be provided to RMA.

Comment: An agent commented that the current proposed rules have not been followed or adhered to by either Crop1 or RMA.

Response: Any approved insurance provider participating in the premium reduction plan, including Crop1, must first meet all requirements of the SRA and approved procedures. In addition, RMA developed procedures and the FCIC Board resolutions that prescribe the premium reduction plan requirements. Beyond those requirements specified in the SRA, Crop1 has been subject to RMA procedures and FCIC Board passed a resolution that contain requirements for participating in the premium reduction plan. There is no evidence that Crop1 has not complied with the SRA, approved procedures, or the procedures and Board resolution.

Further, there are many requirements in the proposed rule that were not applicable to Crop because that rule is not yet in effect. When the interim rule is published, it will be applicable to all participants, including Crop1.

Comment: An agent commented that it took 4–8 weeks for checks to arrive after they were written, which is not good for the survival of the program.

Response: RMA has not received any complaints regarding the timing of payments by Crop1. If the commenter has specific information, it should provide this information to RMA or through the procedures for complaints provided for in the interim rule.

Comment: An agent commented that until all the issues are resolved, there should not be any more policies written even for the approved insurance provider currently selling the premium reduction plan. The commenter suggested they could leave those policies they have but not be allowed to write any more under the premium reduction plan but could write any new policies the same as all approved insurance providers can write.

Response: As stated above, RMA has no choice but to implement the premium reduction plan. However, through this rulemaking process, RMA has been able to consider the issues and the concerns of the interested parties and has developed an interim rule that adequately addresses them. The premium reduction plan under the interim rule is simpler, less burdensome, verifiable, is less likely to cause market disruptions, is less likely to adversely impact the financial condition of the approved insurance providers, and guarantees access by all farmers. For this reason, even if RMA could, there is no reason to shelve the premium reduction plan. In addition, although RMA received a considerable number of comments to the proposed rule, RMA acknowledges that it may want additional input and, therefore, has elected to publish this rule as an interim rule.

Comment: An interested party commented that without the agent force, there is a complete breakdown in the premium reduction plan delivery system for crop insurance. For crop insurance to be of any value, someone will need to perform the agent function.

Response: RMA would agree that crop insurance agents perform a valuable and necessary function in the delivery of the crop insurance program. Nothing in the interim rule would change this principle. Further, as stated above, the adoption of the alternative proposal should minimize market disruptions and permit agents to continue to participate in the crop insurance program. Further, as stated above, approved insurance providers have an incentive to retain their agents in order to maximize their potential underwriting gains and ensure that all policyholders receive the required level of service.

Comment: Several agents and approved insurance providers commented that the way the system was setup with Crop1 was a person was to receive a discount if they bought through the Internet and this is not the case now. A commenter questioned whether it was possible to show a hard efficiency. A commenter stated that once Crop1 changed the way they administered the purpose of the discounts, RMA should have shut their doors to the discounts. A commenter asked that RMA not make the decision to allow everyone to sell at a discount to cover-up this past mistake.

Response: The purpose of Crop1's premium reduction plan was not to deliver crop insurance over the Internet. Use of the Internet was simply the means that Crop1 stated it was using to achieve the cost savings required by section 508(e)(3) of the Act to be able to pay a premium discount. However, there is nothing in the Act that limits the means used by an approved insurance provider to achieve savings, provided such means do not violate existing provisions of the SRA or approved procedures or jeopardize the integrity of the crop insurance program. Therefore, RMA did not have the authority to prevent Crop1 from implementing any other cost saving measures. In fact, approved insurance providers that currently operate under the A&O subsidy do not have to make any changes to their operations to qualify to pay such savings as a premium discount.

This same standard applies to all other approved insurance providers. As long as they can deliver the program for less than their A&O subsidy, they can request to pay a premium discount and under the interim rule, approved insurance providers will not have to report how they intend to achieve their cost savings. This will be solely within the discretion of the approved insurance provider subject to the conditions stated above.

Comment: An agent commented that it believed that the Crop1 agents are using the premium reduction plan to transfer customers that may not have a clue to what would happen if Crop1 does not have the funds to pay out indemnities in case of a poor crop year. The commenter also stated that the farmer does not understand that there is a possibility that the premium that they were quoted may not be as low as they expected.

Response: To participate in the crop insurance program, all approved insurance providers must satisfy all requirements of the SRA, which includes the financial solvency to withstand several consecutive poor crop years. Nothing in the premium reduction plan changes this fundamental requirement. Therefore, before Crop1 was approved to participate in the premium reduction plan, it had demonstrated the requisite financial ability. If there ever is a situation where an approved insurance provider can no longer satisfy the requirements of the SRA, including the ability to pay indemnities, the SRA contains provisions that allow RMA to ensure that losses are timely and properly paid.

The comment that a farmer's insurance quote may not be as low as expected is unclear. When a farmer applies for insurance, agents can give them a general idea of the amount of premium that may be owed but such premium amount is subject to many factors such as the number of acres insured, the coverage level selected, the actual production history of the farmer, whether any acreage is classified as high risk, etc. If the commenter has specific information where a commenter was actually misled by Crop1 or an agent regarding the amount of premium discount to which the farmer was entitled, the commenter should provide such information to the local RMA office.

Comment: An agent commented that it hopes Crop1's problem with its reinsurer does not rub off on other approved insurance providers.

Response: Since the commenter did not identify the problem to which it is referring, RMA cannot provide a substantive response.

B. Program Provisions

Section 400.701

Comment: An approved insurance provider commented that the definition of ''administrative and operating costs'' should exclude the costs associated with CAT because CAT policies will not be subject to the premium reduction plan because the farmer pays no premium. The commenter stated it is also not clear what expenses should be included, such as cost of reinsurance, fronting fees, allocated costs, etc.

Response: RMA agrees with the commenter that the costs associated with CAT should be excluded and has revised the provisions accordingly. In addition, RMA has clarified that policies insured at the CAT level of insurance are not eligible for a premium discount.

Further, because the costs associated with CAT are removed from the A&O costs, the loss adjustment expense subsidy for CAT policies is removed from the A&O subsidy. To simplify the removal of these costs and ensure consistency between approved insurance providers, RMA has fixed these costs as the amount of the loss adjustment expense subsidy for CAT policies. Therefore, the same amount is reduced from the A&O costs and A&O subsidy.

With respect to which costs must be included, RMA cannot provide a list because each approved insurance provider will have different costs. RMA has included in the definition those costs that are specifically excluded. Further, as the definition states, only those costs associated with the delivery of crop insurance can be included. These are generally the same costs that are annually reported on several of the Expense Exhibits provided with the Plan of Operations.

Comment: An approved insurance provider comments that the definition of ''administrative and operating subsidies'' should exclude the subsidies associated with CAT.

Response: As stated above, RMA agrees and has revised the provisions accordingly.

Comment: A few approved insurance providers asked if, in the definition of ''compensation,'' this statement should be ''will be'' rather than ''will not'' be. A commenter stated that the reference to profit sharing within the ''compensation'' definition needs to be reviewed and further refined. The commenter states it does not understand the intent of the provision as written or specifically how it will be used. The commenter also stated the sub points 1, 2 and 3 seem easily manipulated because profit sharing arrangements can be used if they are contractual or triggered by something other than underwriting gains, but yet the underwriting gains are profit. A commenter stated that subpoint 1 is confusing because most profit sharing is contractually obligated if certain conditions are met. The commenter suggested it would be better if it read ''1) the payments under such arrangements are guaranteed regardless of the approved insurance provider's overall underwriting performance.''

Response: RMA agrees with the commenters regarding the omission of the word ''not'' and has revised the provision accordingly. RMA also agrees that the reference to profit sharing arrangements within the definition of ''compensation'' needs clarification and has revised the definition of both ''profit sharing arrangement'' and ''compensation'' accordingly.

The intent of the reference to profit sharing arrangements within the definition of ''compensation'' is important because it prevents approved insurance providers from reducing agent commissions to show a reduction in compensation for the purposes of calculating the A&O costs from later making up the difference through an arrangement to classify as a profit sharing arrangement so such costs would not be included as A&O costs. This provision is intended to preclude such manipulation of costs.

The commenter is correct that underwriting gains are profit but only if the whole book shows an underwriting gain. If several states showed an underwriting gain and other states are in a loss situation such that overall, the approved insurance provider is in a loss position, it is hard to argue that the approved insurance provider earned a profit. These definitions are provided to ensure that only profits for the entire book of business is the ultimate determinant for profit sharing arrangements.

Comment: A few approved insurance providers and interested parties agreed that in the definition of ''compensation'' the concept for the underwriting gain for the whole book should be used when determining contingent commissions. The commenter states that if approved insurance providers were allowed to pay contingent commissions on a state basis, it could pay in one state even though the entire book of business had a loss. The commenter stated that this could reduce the financial stability of

the approved insurance provider in a catastrophic year.

Response: RMA agrees that, to be considered a profit sharing arrangement, the payment under such profit sharing arrangement must contain the requirement that the approved insurance provider's whole book of business show an underwriting gain, even though other requirements to trigger the payment may also be included, and has clarified the provision accordingly.

Comment: An interested party commented that RMA started a program and it is strict in its offering and many approved insurance providers cannot comply with the rules without change. The commenter stated that changing the rules for approved insurance providers and allowing underwriting gains to play a part or allowing payment if they are profitable makes very little sense as there is a system already in place and available to all through stock and cooperatives.

Response: RMA agrees with the commenter that allowing the use of underwriting gains to show an efficiency should not be permitted. In fact, such a practice is specifically precluded by section 508(e)(3) of the Act that requires approved insurance providers be able to show they can deliver the program for less than the A&O subsidy. Underwriting gains are not considered, except, as stated above, in the determination of whether certain profit sharing arrangements are considered as compensation.

Comment: Several approved insurance providers and interested parties commented that contingency commissions should be included as expense.

Response: RMA agrees that there are circumstances where contingent commissions are considered as A&O costs. In its definition of ''compensation,'' RMA identifies situations where contingency commissions or payments may be classified as profit sharing arrangements but they are considered compensation if they are not contingent upon the profitability of the approved insurance provider's whole book of business. The proposed rule was also revised to specify that other conditional payments will be considered as compensation if they are contingent upon something other than underwriting gains, such as bonuses paid for agents turning in their applications, production reports or acreage reports timely, etc.

Comment: Several approved insurance providers and interested parties commented that ceding commissions should not be included in the ''compensation'' calculation. A commenter stated that ceding commission would reduce the approved insurance provider's direct expenses. The commenter stated that the rule was unclear whether this reduction in expense is included. The commenter stated including ceding commission would be unfair to approved insurance providers that only cede a small amount of their business to outside reinsurers. The commenter asked why approved insurance providers that rely heavily on reinsurance should have an unfair advantage when calculating the premium reduction plan. A commenter states that ceding commission changes each year. A commenter stated that if RMA allows approved insurance providers to consider any other forms of income beyond FCIC-paid expense reimbursement in qualifying for a premium reduction plan, FCIC would open the door to situations where no real efficiency exists and would invite reinsurance schemes designed to artificially inflate an approved insurance provider's ceding commission in order to provide sufficient ''income'' for the approved insurance provider to demonstrate an efficiency.

Response: RMA agrees with all comments that reinsurance transactions should not be a factor in the evaluation of an approved insurance provider's cost efficiencies under the premium reduction plan. Currently, ceding commissions and reinsurance premiums are expressly excluded from the Expense Exhibits provided with the Plan of Operations. One reason is the A&O subsidy is suppose to reimburse approved insurance providers for their selling and servicing of Federal crop insurance policies and these types and amounts of payments from commercial reinsurance transactions would appear to be a cost or income associated with the financial risk management strategy of an approved insurance provider, rather than a necessary expense in the delivery of crop insurance.

RMA acknowledges that the National Association of Insurance Commissioners (NAIC) allows ceding to be offset against the approved insurance providers expenses. However, for the purpose of NAIC, all expenses of the approved insurance provider are reported, regardless of whether such expenses are specifically related to the delivery of the crop insurance program. However, section 508(e)(3) of the Act specifically refers to the costs to deliver the Federal crop insurance program, which is a much narrower definition of the expenses that is allowed by NAIC. As stated above, while ceding commission may be treated as a negative expense by statutory accounting rules, it is not directly related to selling and servicing the Federal crop insurance program.

Further, the expenses reported for the purpose of the premium reduction plan are required to be compared to the A&O subsidy received. For years, RMA has required approved insurance providers to report the costs that RMA considered directly related to the delivery of the Federal crop insurance program on the Expense Exhibits provided with the Plan of Operations. Ceding commission has not been included as a negative expense on these Exhibits and there is no rational basis to include such negative expenses for the premium reduction plan when they would not be considered for expense reporting purposes under the SRA.

In addition, these Expense Exhibits are used by RMA and its oversight bodies to determine whether the amount of A&O subsidy is appropriate to cover these expenses. When reviewing the issue of ceding commission, RMA's oversight bodies have directed RMA to exclude non-related expenses, such as commercial reinsurance payments. Therefore, RMA has excluded ceding commissions and reinsurance premiums from A&O costs and A&O subsidy.

Comment: An approved insurance provider suggested another argument for not including ceding commission as ''compensation'' is that the reinsurer is paying the ceding commission because they expect an underwriting gain large enough to pay the commission. Therefore, it has nothing to do with expense efficiency.

Response: RMA agrees that ceding commissions should not be allowed as an offset to costs included in the expense statement and the provisions are revised accordingly.

Comment: A few approved insurance providers and interested parties commented that excess-of-loss reinsurance cost paid by an approved insurance provider should be included as compensation because it applies to the entire book of business and is a cost of doing business. The commenter stated that in many cases it is a necessary expense because approved insurance providers could not afford to absorb catastrophic losses and it is required to be reported on the expense exhibit.

Response: As stated above, commercial reinsurance ceding commissions or premiums are not included on the Expense Exhibits that contain the costs for delivering the Federal crop insurance program provided with the Plan of Operations. As stated above, this is because ceding commission or premiums for

commercial reinsurance transactions are not necessary to the delivery of the Federal crop insurance program to farmers. They are expense associated with the management of the approved insurance provider's risks. Further, allowing commercial reinsurance ceding commissions or premiums to be included to offset expenses could also create potential distortions in the commercial reinsurance market. Therefore, no change has been made in response to this comment.

Comment: A few approved insurance providers and interested parties commented that approved insurance providers must include all expenses, including general management, underwriting overhead, information systems and allocated and unallocated claims expense, as well as the direct expenses of salaries, commissions, benefits, travel, phones, rent, etc.

Response: RMA agrees with the comment that all operational expenses that involve the delivery of the Federal crop insurance program should be incorporated into the Expense Exhibits provided with the Plan of Operations and used to determine efficiencies and premium discounts under the interim rule. These are already required for the Expense Exhibits provided with the Plan of Operations so no changes would be required in the reporting requirements.

Comment: An approved insurance provider suggested that the amount of any profit sharing payment under the premium reduction plan should be subject to the same limit as the premium discount. For example, if the maximum premium discount is 4% under the premium reduction plan, the commenter recommends that this be the maximum profit sharing payment allowed in the year covered by the premium reduction plan. In addition, to enhance the stability of the crop insurance program, the commenter suggests that approved insurance providers should not be allowed to pay a ''profit sharing bonus'' if they have not generated an average underwriting gain of at least 15% of gross premium over the preceding two years.

Response: Section 508(e)(3) of the Act is only intended to provide the conditions under which approved insurance providers can pay premium discounts. It is not intended to permit RMA to regulate the general management decisions of the approved insurance providers. RMA has no authority to preclude an approved insurance provider from making profit sharing payments or to limit when such payments can be made. Approved insurance providers are in the best position to determine whether their financial condition will permit profit sharing payments. Further, RMA monitors the financial conditions of the approved insurance providers as a means to ensure the financial stability of the crop insurance program and can require remedial measures if the approved insurance providers are unable to meet the financial requirements of the SRA and applicable regulations. However, there is no rational basis for RMA to impose the requirements suggested by the commenters when there is no evidence that the approved insurance providers are in financial jeopardy. Therefore, no change has been made in response to this comment.

Comment: An agent commented there is no definition in the rule for the term ''efficiency''. The commenter stated that as presently written, this could allow an approved insurance provider to reduce agents' commissions or lower wages paid to loss adjusters, to name a few, and call it an ''efficiency''. The commenter stated that while this would be a cost savings, one would be hard pressed to show this as more efficient. The commenter stated this was clearly not the intent of Congress when the Act was written, and is not their intent today.

Response: RMA disagrees with the comment. First, there is a definition of ''efficiency'' in the proposed and interim rules. Second, section 508(e)(3) of the Act specifically states that approved insurance providers can pay premium discounts when approved insurance providers can demonstrate they can deliver the program more efficiently than their A&O subsidy. The use of the monetary term A&O subsidy to determine whether an efficiency exists allows RMA to look at efficiencies as cost savings as well as changes in operations and the interim rule has been clarified to more clearly reflects this position. RMA has deleted those provisions in the definition of ''efficiency'' that would require a change to an approved insurance provider's operation because this provision unfairly penalized approved insurance providers that were currently operating before their A&O subsidy. However, RMA has retained the requirement that an efficiency must not come exclusively from a reduction in agents' commissions.

Comment: A few approved insurance providers and interested parties asked that with respect to the definition of ''efficiency,'' whether the same caveats apply to reductions in compensation. The commenter also stated that it was unlikely that approved insurance providers would be able to have expenses less than the A&O subsidy and gave the example 21.5% minus (1) reinsurance costs ≥ 3%, (2) Loss adjustment ≥ 4%, (3) General & admin ≥ 5% and commissions ≥ 10). A commenter stated that the negative gap between A&O reimbursement and actual approved insurance provider expenses is an enormous hurdle that approved insurance providers would need to overcome in order to qualify for the premium reduction plan.

Response: RMA assumes that the caveats to which the commenter refers is the preclusion of the use of cost savings attributable to projected increased sales or proposed reductions in loss adjustment expenses as an efficiency. The caveat regarding the cost savings attributable to projected increased sales has been removed from the interim rule because premium discounts are now based on actual costs not projected costs. Further, because premium discounts are now based on actual cost savings, the limitation with respect to reduction in loss adjustment expenses has also been removed. Since losses vary by year, it would be impossible to verify that cost reductions were the result of the premium reduction plan and now RMA will have an opportunity to determine whether loss adjustment was conducted properly before approving the payment of a premium discount.

The commenter also opines that qualifying for the premium reduction plan would be extremely difficult for an approved insurance provider because of a large negative gap between actual expenses of approved insurance providers and the A&O expense reimbursement. This may be true although the commenter mistakenly includes reinsurance costs, which are expressly excluded in the interim rule. However, section 508(e)(3) of the Act was only intended to provide approved insurance providers with the opportunity to compete on price. The fact that Congress conditioned such competition on the condition that approved insurance providers operate below their A&O subsidy shows that the opportunity is not guaranteed.

Comment: An approved insurance provider commented that it supported the complete definition of ''efficiency'' and felt that RMA's effort not to place specific limits on compensation is appropriate. The commenter states that an approved insurance provider's overall cost of operation is what is most important and that the free market will ultimately determine the appropriate balance between agent compensation levels and service provided. The

commenter states that agents should have the option to seek the most attractive compensation available in a competitive market, just as farmers should be able to seek the most attractive crop insurance program available to them. The commenter states that the most attractive program for agents and farmers will likely require them to consider both associated costs and the level of service provided.

Response: RMA agrees that the premium reduction plan should operate within the free market principles expressed. Price competition is premised on the ability to provide the same product or service at a better price, or provide a better product or service for the same price. Therefore, farmers are likely to consider both service and cost when they select an approved insurance provider. However, to protect the integrity of the program and ensure that all farmers have equal access to at least the same level of service, RMA has clarified that a reduction in service means when the agent or approved insurance provider fails to comply with all the requirements of the SRA or approved procedures regarding service. Further, as stated above, RMA had to revise the definition of ''efficiency'' to reflect that premium discounts will now be based on actual costs, not projected.

Comment: An approved insurance provider commented that approved insurance providers should not be penalized because they have a different business philosophy. The commenter states that ''efficiencies'' currently exclude projected or actual underwriting gains. The commenter states that it does not operate within the A&O paid under the SRA because of its expenses associated with training and oversight, which allows it to minimize fraud, waste, and abuse and outperform other approved insurance providers. The commenter asks RMA to revisit the issue and allow gains when considering efficiencies.

Response: Section 508(e)(3) of the Act precludes the consideration of underwriting gains when determining an efficiency. Underwriting gains would be considered an income and the only income that can be considered under the Act is the A&O subsidy. As stated above, it is up to the approved insurance provider to evaluate its operation to determine whether it can attain cost savings and still comply with all requirements of the SRA and approved procedures. However, RMA does recognize that certain profit sharing arrangements can legitimately be considered distribution of profits rather than A&O costs and the definition of ''compensation'' in the interim rule reflects that.

Comment: An approved insurance provider supported allowing only a portion of the savings come from reductions in compensation, without which the playing field would be tilted in favor of large approved insurance providers over smaller providers. The commenter stated it was a strong believer in free market competition, which requires a fair, level playing field in which small and large providers alike may compete for the benefit of farmers.

Response: RMA agrees that only a portion of savings should come from reductions in agents' compensation and has clarified and retained this provision in the interim rule.

Comment: An approved insurance provider asked if the efficiency is more than commissions, how RMA will be able to verify the accuracy of such savings. It is easy to verify that the agent's commission has been reduced at no loss of service to the insured by auditing approved insurance provider numbers and calling insureds. The commenter asked how long it takes to verify adjusters are following claim's procedures, agents are following underwriting guidelines, or compliance reviews are being completed thoroughly. The commenter is concerned that when these errors are finally discovered, many millions of dollars may need to be recovered from farmers.

Response: As stated above, premium discounts are now based on actual cost savings, not projected. Further, RMA has elected to use Expense Exhibits provided with the Plan of Operations to determine efficiencies and premium discounts because such Expense Exhibits can be verified by the approved insurance provider's statutory accounting reports and must be audited and certified by a certified public accountant experienced in insurance accounting.

Since the premium discount is based on actual cost savings determined after the end of the reinsurance year, RMA can determine an approved insurance provider's compliance with all the requirements of the SRA and approved procedures regarding service, loss adjustment, quality control, etc., before approving the payment of any premium discount. Such requirements will be monitored in the same manner as currently under the SRA.

Comment: An approved insurance provider commented that with respect to the definition of ''efficiency,'' the procedural determination of what is to be allowed as A&O income, and what must be accounted for as an A&O expense, raises several questions. Any departure from the practice of allowing only A&O income from FCIC to be considered when determining an ''efficiency'' for purposes of the premium reduction plan would contradict legislation and create opportunities for abuse. The commenter stated that allowing any A&O expenses to be excluded from consideration when determining the discount would open the door to creative accounting schemes detrimental to the stability of the approved insurance provider and the delivery system overall as well as RMA's ability to regulate the system.

Response: RMA agrees with the commenter that only A&O subsidy paid by RMA can be included as income and all costs directly related to the delivery of the Federal crop insurance program must be included as A&O costs. For this reason, RMA has elected to use the current mechanism for reporting these costs through the Expense Exhibits provided with the Plan of Operations to determine whether there has been an efficiency. As stated above, these Expense Exhibits are verifiable and must be audited and certified regarding their completeness, accuracy and compliance with the SRA. However, as stated above, because the premium reduction plan is not available for policies with the CAT level of coverage, the A&O costs and A&O subsidy associated with such policies have been excluded.

Comment: Several approved insurance providers and interested parties commented that the definition of ''efficiency'' is vague because it is silent as to the meaning of the terms ''portion'' or ''a reduction in compensation.'' A portion is a vague, nonspecific amount that is ''a part of the whole.'' Webster's Third Internatl. Dictionary at 1768 (Rev. Ed. 1993). A commenter stated that this means a ''portion'' may vary from one percent to 99 percent and asked if 99 percent of the savings could be predicated on reduced compensation. If not, the commenter asked what ''portion'' of savings may be associated with ''a reduction in compensation.'' A commenter proposed it should be restated as follows: ''Not more than 25% of the approved insurance provider's monetary savings can come from a reduction in compensation, the rest must come from changes in administrative and operating procedures.''

Response: RMA agrees with the commenter that the term ''portion'' in the definition of efficiency could reflect a wide range of possibilities. However, it would be impossible to set a specific standard for ''portion'' because of the

wide variety of business operations of the approved insurance providers. It is the approved insurance provider that must evaluate its operation to determine where it can cut its costs. The proposed and interim rule simply requires that to qualify to pay a premium discount, at least some of these savings must come from changes other than compensation. With respect to a definition for ''reduction in compensation,'' such a definition is not required. The term ''compensation'' is defined in the interim rule and standards for reporting compensation on the Expense Exhibits currently exist. Further, as stated above, RMA has developed a formula that will be used to determine when there has been a reduction in compensation and changes in the operation.

Further, as stated above, approved insurance providers have an incentive to retain agents so they would not set commission rates at so low a rate that they risked agents going out of business or moving their books of business to other approved insurance providers. The free market forces will determine what will constitute a fair commission. Therefore, no change has been made in response to this comment.

Comment: Several interested parties commented that the premium discount should be shared at least 50/50 with the approved insurance provider. A commenter recommends a split of 75/25 with the insured provider contributing a majority to the premium discount. A commenter stated it would show that both the agent and approved insurance provider are willing to participate. A commenter stated that coupling this with approved insurance providers staying below A&O and keeping any reinsurance gain or loss out of the schedule will guarantee the program's integrity and longevity.

Response: As stated above, it would be impossible to set a specific standard for ''portion'' because of the wide variety of business operations of the approved insurance providers. It is the approved insurance provider that must evaluate its operation to determine where it can attain efficiencies and still comply with all the terms of the SRA and approved procedures. Further, as stated above, the approved insurance provider's incentive to retain agents should mitigate the possibility of approved insurance providers making such drastic cuts in agent commissions that agents can no longer afford to sell crop insurance or are forced to move their book of business to other approved insurance providers.

Comment: A few interested parties commented that ''efficiency'' is defined in the dictionary as acting or producing effectively with a minimum of waste, expense, or unnecessary effort and exhibiting a high ratio of output to input. The commenter stated that in the business world, this means to produce more with a given amount of resources or produce the same with fewer resources. The commenter stated that cost cutting is not considered an efficiency. Cost cutting generally results in receiving less goods or services or both. The commenter stated that this does not meet the requirements of ''more efficiently'' in the Act.

Response: RMA disagrees with the commenter. Section 508(e)(3) of the Act specifically uses the term efficiency to compare the difference between the costs to deliver the Federal crop insurance program with the A&O subsidy. Therefore, cost cutting would meet this requirement. Further, the intent of section 508(e)(3) of the Act is to allow price competition. As stated above price competition occurs when there is the same level of service for a reduced price, or a higher level of service for the same price. Another commonly accepted definition of ''efficiency'' (Webster's Third New International Dictionary) is ''capacity to produce desired results with a minimum expenditure of energy, time, money or materials.'' To ensure that this principle remains in the premium reduction plan, RMA mandates that there cannot be a reduction in service, which is defined as the requirements contained in the SRA and approved procedures.

Comment: An approved insurance provider commented that the definition of ''efficiency'' is discriminatory against approved insurance providers that are operating under the A&O because it states that the monetary savings must result from changes in the administrative and operating procedure and expenses of the approved insurance provider. The commenter stated that the original language did not require changes in procedures or expenses. The commenter stated that an approved insurance provider should be able to show it is operating under the A&O under its current procedures. The commenter stated the proposed language favors approved insurance providers that pay high commissions because they can demonstrate the changes and disfavors approved insurance providers who are keeping commission costs down. The commenter proposes that an approved insurance provider demonstrate for not less than a year that they can operate below the A&O before they have a premium reduction plan in place. The commenter stated that the plan would then be based on actual not projected efficiencies.

Response: RMA agrees that definition of efficiency in the proposed rule may have discriminated against approved insurance providers that currently deliver the crop insurance program for less than the A&O subsidy and has removed the requirement from the interim rule. Further, as stated above, RMA is requiring that premium discounts be based on actual cost savings.

Comment: An approved insurance provider commented that limiting the amount of the savings that is related to ''a reduction in compensation'' is contrary to FCIC's goal of ensuring easily verifiable efficiencies. Indeed, the proposed rule recognizes that savings based on state-by-state reductions to agent commissions ''would be straightforward,'' and ''easy to verify.'' Moreover, the proposed rule acknowledges that the expert reviewers confirmed the economic rationale underlying a system in which an approved insurance provider based its efficiencies on reduced commissions. The commenter questions why FCIC has decided to limit the amount of an approved insurance provider's ''monetary savings can come from a reduction in compensation.''

Response: RMA does not agree that limiting reductions in compensation reduces RMA's ability to verify other cost saving measures. As stated above, RMA is using the Expense Exhibits to the SRA, which contain costs that are verifiable. In addition, RMA has developed a formula that will allow it to allocate costs not attributable to agent compensation or loss adjustment expense to each state. This formula is straightforward, relatively simple to apply, and will be provided to approved insurance providers through approved procedures.

As stated above, it is up to the approved insurance provider to analyze its operation to determine where any cost savings can be achieved. Further, the use of the term ''portion'' provides approved insurance providers considerable latitude in making this analysis.

Comment: An approved insurance provider commented the definition of ''efficiency'' is inconsistent with the Act. The definition distinguishes between costs relating to compensation and costs relating to administrative and operating procedures. The Act does not define the term ''administrative and operating.'' However, section 516(a)(2)(A) of the Act authorizes the appropriation of ''such sums necessary to cover * * * [t]he administrative and

operating expenses of the Corporation for the sales commissions of agents.'' The administrative and operating costs for which FCIC subsidizes the approved insurance providers pursuant to section 516(a)(2)(A) and which approved insurance providers must reduce to qualify for the premium reduction plan pursuant to section 508(e)(3) contemplate only one type of expense—agent commissions. For FCIC to restrict the degree to which approved insurance providers reduce agent commissions in order to achieve program efficiency contravenes both the meaning and intent of the Act.

Response: To adopt the commenter's interpretation would mean that RMA would only be able to reimburse approved insurance providers for the agent commission they pay and not the other expenses they incur, which means the entire amount paid as A&O subsidy must be paid by approved insurance providers to agents as commission. Such an interpretation would be contrary to section 508(k)(4) of the Act which states that the A&O subsidy is to ''reimburse approved insurance providers and agents for the administrative and operating costs of the providers and agents.''

Further, this interpretation is incorrect because it refers to the ''administrative and operating expenses of the Corporation for the sales commissions of agents.'' FCIC does not incur any administrative and operating expense for the sales commissions of agents. Such expenses are incurred by the approved insurance providers who contract with and pay agent commissions. These commission payments would be considered as part of the approved insurance providers administrative and operating expenses and payment is authorized under sections 516(a)(2)(B) and 516(b)(1)(C) of the Act.

Comment: An interested party commented that the definitions of ''compensation'' and ''profit sharing'' are not well crafted and require extensive editing before the interim rule can be effectively analyzed.

Response: RMA agrees that the definitions in the proposed rule require clarification and has revised both definitions.

Comment: An approved insurance provider supported the definition of ''profit sharing arrangements'' as a whole, but point out specifically that '' * * * gain on the total book'' is important because the alternative would allow an approved insurance provider to divide its book for purposes of creating incentives and disincentives for agents. Since the law requires equal service to all farmers, the commenter views the division of books of business to create such incentives/disincentives and any resulting market segmentation as likely to result in approved insurance providers and/or their agents avoiding their legal obligation to serve all farmers on an equal basis.

Response: RMA agrees that profit sharing arrangements must be based on the total underwriting gain of the approved insurance provider's book of business. To allow otherwise would not only allow approved insurance providers to divide its book of business for the purpose of creating incentives, as stated above, it would permit the approved insurance provider to pay profits even though it earned no profits for the reinsurance year. This could jeopardize the financial stability of the approved insurance providers in loss years.

Comment: An approved insurance provider commented that it supported the definition of ''unfair discrimination'' because it ensures that approved insurance providers and their agents serve all farmers.

Response: RMA agrees with the commenter and this definition is included in the interim rule.

Comment: An approved insurance provider suggested a clear definition for ''producer.'' The commenters recommend that ''producer'' be defined as a ''crop insurance policy holder.''

Response: Producer cannot be defined as a ''crop insurance policyholder'' because many of the references refer to farmers who may not yet have applied for insurance and become policyholders. Further, producer is a common, well known term in the crop insurance program, used on the Act, regulations, the SRA, and approved procedures. Therefore, no change is made.

Section 400.714

Comment: An approved insurance provider comments that, with respect to § 400.714(a), the ''15 day'' window for submission of revised Plans of Operations is appropriate for this year only, since the finalization of the proposed rule will leave a very tight time frame.

Response: RMA agrees with the comment and has preserved this provision in the interim rule.

Comment: An approved insurance provider comments that, with respect to § 400.714(b), May 1 would be a more appropriate deadline for subsequent applications because an April 1 deadline for submissions comes too closely after the spring crops sales closing deadline, there is also an approved waiting period in which the agent can complete record keeping, and RMA needs the opportunity to spread its work load evenly.

Response: RMA recognizes and appreciates the commenter's concerns about the timing and workload burden required for preparing requests for the opportunity to pay premium discounts under the proposed rule. However, as stated above, those burdens have been significantly reduced in the interim rule. Under the interim rule there will be two deadlines for requests. The first will be when an approved insurance provider seeks eligibility to offer a premium reduction plan. This request will be very limited in the information required and will be due with submission of the Plan of Operations. Because of the limited nature of the information, approved insurance providers should have little difficulty providing this information at that time. Because RMA will also be reviewing the Plans of Operation during this time and RMA needs sufficient time to evaluate the requests before the beginning of the reinsurance year. The second request is for RMA approval to pay a discount, which is due not later than December 31 after the end of the reinsurance year.

Comment: An approved insurance provider comments that, with respect to § 400.714(c), it supports this provision because it is committed to a level playing field in which farmers have the opportunity to make insurance choices having full access to the information they need to make informed business decisions. In order to allow farmers this opportunity, the premium reduction plans must be submitted by all approved insurance providers and approved by the RMA in a timely and consistent fashion.

Response: RMA agrees that the proposed rule provides a framework for requesting the opportunity to offer a premium discount that provides equal opportunity to all existing approved insurance providers and retained the provisions in the interim rule. However, RMA determined that additional provisions were necessary to address the situation where approved insurance providers that enter the crop insurance program after the start of the reinsurance year. Therefore, RMA has added provisions to the interim rule to allow new approved insurance providers to include their requests for an opportunity to offer a premium discount with their application for a SRA.

Comment: An approved insurance provider comments that, with respect to § 400.714(d), it supports the provision since the law clearly requires that

approved insurance providers who make savings must pass them on to farmers, there would be no valid reason to withdraw the premium reduction plan once savings are proven since they must be passed on to the farmers. This provision benefits farmers, as well as the crop insurance program as a whole, because it provides strong protections to farmers.

Response: Since the interim rule revised the requirement that premium discounts be paid on actual savings determined at the end of the reinsurance year, there is no longer a requirement for a provision to allow approved insurance providers to withdraw their request. Premium discounts are no longer guaranteed and farmers are expressly informed that such discounts may not be approved to be paid. Therefore, approved insurance providers that are unable to, or elect not to, pay a premium discount can simply not request approval for the payment of a discount.

Comment: An approved insurance provider comments that, with respect to § 400.714(e), it is absolutely necessary that all trade secrets and confidential commercial or financial information in submissions remain completely confidential. However, the commenter notes that 5 U.S.C. 554(b)(4) protects ''trade secrets'' as well as commercial or financial information. Accordingly, the commenter suggest adding the following language to this subsection in order to track 5 U.S.C. 552(b)(4): ''Any trade secrets and commercial or financial information submitted with a revised Plan of Operations will be protected * * *.''

Response: Since this provision only referred to the existing protections in law, there is no need to include such a provision here. Existing law regarding the protection from disclosure of such information will continue to apply.

Section 400.715

Comment: An approved insurance provider commented that in § 400.715(a) RMA is allowing as much as a 4 percent reduction in the net book premium. With the reduced A&O reimbursements found in the 2006 SRA, the commenter states a four percent reduction is too much. Most premium is produced from revenue coverage such as Crop Revenue Coverage or Revenue Assurance, and in a number of states, the 80 percent coverage and higher is selected, driving the average A&O near 20 percent. There is no way for an approved insurance provider to service such a complicated line of business at today's commodity prices in the 16 percent range. With threatened budget cuts to the crop insurance program, the A&O may be reduced even more. Only an irresponsible approved insurance provider would make such a filing. This approved insurance provider would need to take shortcuts to make such a filing possible. RMA should consider capping the discount at 2 percent until it is sure that approved insurance providers can write at such a low expense ratio and still service the business properly.

Response: Since the interim rule requires that all premium discounts be based on the actual cost savings of the approved insurance providers, the commenters concerns that a 4 percent reduction A&O costs is unrealistic have already been addressed. An approved insurance provider can only pay the 4 percent maximum premium discount if it can prove that it had the requisite cost savings and it was in compliance with all requirements of the interim rule, the SRA, and applicable procedures, including the requirements regarding service, loss adjustment, quality control, etc. Compliance with these requirements will be monitored under the SRA and approval of the payment of a premium discount will not be provided until compliance has been determined. However, RMA will retain the cap to allow it to manage the premium reduction plan to ensure there are no market disruptions from approved insurance providers trying to cut costs too drastically. Therefore, no change has been made in response to this comment.

Comment: An approved insurance provider commented that philosophical and competitive impact concerns notwithstanding, from solely a cost accounting view, the cap on premium discounts should not be a concern if the cost savings from efficiencies are valid. However, the commenter suggests they may not be valid.

Response: Since premium discounts are based on the actual cost savings of the approved insurance provider, the maximum premium discount may not be needed. However, as stated above, to ensure that there are no market disruptions from approved insurance providers trying to cut costs too drastically, RMA is retaining the cap. It can be removed or adjusted at a later date if it proves not to be necessary.

Comment: A few interested parties agreed with the cap. A commenter stated that the limits to adjusting and other costs outlined in § 400.715(a), § 400.716(h) and § 400.719 are particularly crucial to the viability of the program as well as the solvency issues raised above. These limitations will ensure that reductions are based on cost efficiencies achieved by the participating approved insurance provider. The commenter urges RMA to consider carefully the impact of increases in the future maximum limitations on the premium discount and what those changes will mean to other approved insurance providers, while maintaining competition in the marketplace. A commenter stated no caps would result in a bidding war and service to farmers would be drastically hindered.

Response: As stated above, the use of actual cost savings to determine premium discounts may eliminate the need for the cap in the future, but RMA is retaining it to manage expectations of the limits of this program and to ensure that there are no market disruptions. RMA will consider the effect on the market when it determines whether there is a need for such a cap and the appropriate amount in the future.

Comment: An approved insurance provider commented that § 400.715(a) allows premium discounts to vary from 1.0 to 4.0 percent between approved insurance providers. The commenters state that this is inherently discriminatory and farmers do not have equal access to the best reductions. It depends upon the approved insurance provider writing their insurance. Premiums charged the farmers for their crop insurance are the same regardless of the approved insurance provider that insures them so it only follows that the discounts should be identical between approved insurance providers.

Response: Section 508(e)(3) of the Act clearly gives the right to any approved insurance provider that can deliver crop insurance at a cost less than the A&O subsidy to pay a premium discount on the basis of such savings. There is no requirement that each approved insurance provider pay the same premium discount. Such a requirement would be contrary to the very price competition that section 508(e)(3) was intended to promote. Further, it would be impossible to impose such a burden on the approved insurance providers because their operations are so different. Only they can determine where it would be appropriate to cut costs while still complying with all requirements of the SRA and approved procedures.

Further, allowing these differences is not discriminatory because every farmer has the free market choice to be insured with the approved insurance provider that historically pays the highest premium discount. RMA agrees that its election to allow approved insurance providers to select the states in which it will participate in the premium reduction plan could result in farmers

not having access to premium discounts. However, as stated above, when weighed against the possibility that approved insurance providers will withdraw from such states, leaving these farmers without any insurance protection, the loss of the opportunity to receive a premium discount at such later date seemed the most appropriate option.

Comment: An approved insurance provider comments that, with respect to § 400.715(a), it supports the imposition of a cap. The commenter states it provides a benefit to farmers by acting as a stabilizer to the marketplace and making sure that approved insurance providers who seek approval of a premium reduction plan do so with due care and submit only accurate information. However, the commenters suggest the cap be raised to 5.0%. The commenter stated it will continue to benefit farmers while maintaining stability in the market if the RMA allows this additional amount of flexibility for approved insurance providers to identify and pass through cost savings to farmers, and for the RMA to approve them if they are adequately documented.

Response: As stated above, premium discounts are based on the actual cost savings achieved by the approved insurance provider. However, RMA has elected to retain the maximum 4.0 percent cap to manage program expectations and to avoid market disruptions that could occur if approved insurance providers attempt to cut costs too drastically. Until it has more information, RMA is reluctant to raise the cap but, in the future, RMA will re-evaluate the cap to determine whether it is necessary or what would be the appropriate amount. Therefore, no change is made in response to this comment.

Comment: An approved insurance provider commented that in § 400.715(b), now redesignated § 400.715(h), RMA is proposing that the premium reduction plan be instituted for all premium written by the approved insurance provider regardless of crop or state of location. Some approved insurance providers only write in the Midwest where the underwriting gain has been good. In states where the results have been less favorable, sometimes the only reason to write there is for the A&O subsidy. The commenter stated that an approved insurance provider may consider withdrawing from such a state to keep rates competitive in profitable states. The commenter asked whether RMA is concerned that the few approved insurance providers writing in a number of these unpopular states might withdraw to file a premium reduction plan to compete in the profitable Midwest.

Response: As stated above, RMA has reconsidered the requirement that approved insurance providers offer the premium discount in all states in which they write business for the very reasons mentioned by this commenter. RMA determined that the possibility of a farmer being left without insurance protection was far worse than that same farmer not having an opportunity to receive a premium discount in the future. As a result, the interim rule will allow approved insurance providers to select the states in which it will participate in the premium reduction plan.

Comment: Several approved insurance providers and agents commented that the premium reduction plan should only be done over all policies, plans and states. Otherwise, expense loading could be easily shifted to those policies which the premium reduction plan is not offered. A commenter stated that such shifting will likely occur due to the questionable ability for any approved insurance provider to operate within A&O reimbursement. A commenter stated that it is not fair to allow an approved insurance provider to offer the premium reduction plan and the traditional crop insurance in the same state. The commenter stated agents should not be able to ''pick'' who would be offered the premium reduction plan. A commenter stated that to suddenly allow a myriad of state-by-state choices could foster an unstable situation and that the ''all states/all crops/all insurance policies and plans'' requirement minimizes the risk of unfair competitive disadvantage among premium reduction plans.

Response: RMA agrees with the comment that, within a state, an approved insurance provider participating in the premium reduction plan must pay the approved premium discount to all policyholders, regardless of the crop insured, the coverage level or the plan of insurance. This requirement has been retained. However, as stated above, the real concern that approved insurance providers may withdraw from states necessitated allowing approved insurance providers the ability to select the states in which to participate in the premium reduction plan. As stated above, RMA has dealt with the expense loading issue through the use of Expense Exhibits to the SRA to determine efficiencies and the development of the formula that contains the allocation of costs and allows RMA and approved insurance providers to determine the amount of premium discount. Further, there should not be an issue regarding unfair competitive advantage because the purpose of the premium reduction plan is to introduce price competition and now all approved insurance providers have the option to select the state in which to participate in the premium reduction plan so the playing field is level.

Comment: Several approved insurance providers commented that in § 400.715(b), now redesignated § 400.715(h), forcing an approved insurance provider to offer the premium reduction plan in all states in which it does business penalizes national carriers and, as explained in connection with § 400.175(c), ignores critical differences that exist among the various states, crops and policies. Only two approved insurance providers sell and service policies nationally and nothing precludes them from withdrawing from high-risk, low-reward states. The commenter stated that RMA's shortsighted decision to prohibit the premium reduction plan from varying by state only increases that likelihood.

Response: RMA agrees with the commenter and, as stated above, the interim rule now allows approved insurance providers to select the states in which it will participate in the premium reduction plan and to vary its requested discount by state within the maximum discount allowed. However, within a state, the interim rule still requires that the premium discount be the same for all crops, plans of insurance, and coverage levels.

Comment: An approved insurance provider commented that, with respect to § 400.715(b), now redesignated § 400.715(h), if the marketplace and competition compel the approved insurance provider to implement the premium reduction plan, the approved insurance provider will do so. To that end, if FCIC mandates that the approved insurance provider offer its plan in all states or in none, the approved insurance provider likely will reconsider its role as a national carrier. The commenter stated the approved insurance provider would sooner abandon marginal states than allow its quality business to be eroded by regional carriers who would profit from FCIC's inability to recognize or unwillingness to acknowledge the economic variables that exist between the states.

Response: As stated above, RMA agrees with the commenter and the interim rule now allows approved insurance providers to select the states

in which it will participate in the premium reduction plan. However, within a state, the interim rule still requires that the premium discount be the same for all crops, plans of insurance, and coverage levels.

Comment: Several approved insurance providers, agents, farmers and interested parties suggested that with respect to § 400.715(b), now redesignated § 400.715(h), approved insurance providers who offer the premium reduction plan make it available for all insurance plans and for all crops grown in all of the states they serve. If an approved insurance provider offers the discount in one area then they should make it available in all areas and not discriminate by crop, insurance plan, or state location.

Response: RMA agrees with the comment that a premium discount should not vary by crop, plan of insurance, or coverage level. However, RMA has assessed the possible impact of not allowing approved insurance providers to select the states in which it will participate in the premium reduction plan and has determined that the adverse effect of possible withdrawal of approved insurance providers significantly outweighs the effect on farmers if they do not have the opportunity to receive a premium discount in the future.

Comment: An approved insurance provider recommends that, with respect to § 400.715(b), now redesignated § 400.715(h), and § 400.715 (c), approved insurance providers have the option not to offer a premium discount on CAT policies as farmers do not pay a premium (only an administrative fee) for CAT policies. Further, the commenter would recommend the clause ''or any other basis'' be eliminated and replaced with ''or any basis which could limit or restrict access to a premium reduction, in whole or in part, to some producers.'' As long as cost savings programs are fair and equally available to all farmers, they should be presented to and considered by the RMA.

Response: As stated above, RMA has added a provision that would make policies insured at the CAT level of coverage ineligible for the premium reduction plan.

However, RMA disagrees with the suggestion to replace the clause ''or any other basis.'' This clause is intended to be all inclusive to prevent any means to exclude a policy from receiving a premium discount. RMA is concerned that making the recommended change could lead to farmers being denied access to the premium discount or receiving a different amount of premium discount based on whether they are small, limited resource, women, or minority farmers or on their loss history, which is exactly what the interim tried to avoid. Therefore, no change is made in response to this comment.

Comment: An approved insurance provider commented that varying levels of agent compensation from state to state should not be allowed to justify a difference in premium discount from state to state, although the commenter acknowledges that market forces cause approved insurance providers typically to pay different rates of agent compensation around the country.

Response: The proposed rule did require that the approved insurance provider pay the same premium discount in each state. This would mean that approved insurance providers would need to cut the same amount of costs from each state in order to meet the requirement in section 508(e)(3) of the Act that efficiencies correspond to the premium discount. However, as the commenter correctly states, approved insurance providers already vary the amount of agent commissions by state. Further, the costs within each state may well be different and to require that the same cost savings could very well jeopardize the operations of the approved insurance provider in the state and its ability to comply with all the requirements of the SRA. For these and the other reasons stated above, RMA has elected to allow approved insurance providers to select the states in which it will participate in the premium reduction plan and the amount of premium discount to vary between states. However, within a state, the amount of premium discount must be the same.

Comment: Several agents commented that the concept of the premium reduction plan is good, but the rules that the RMA has proposed are too restrictive. The commenter states that § 400.715(b), which forces the approved insurance providers to offer the premium reduction plan in all geographies makes the premium reduction plan a very bad idea. The commenter stated that if approved insurance providers agree to all of the rules of the premium reduction plan as they stand today they are putting themselves at a huge financial risk. This in turn creates the potential for destabilizing the industry.

Response: RMA agrees with the commenters and, as stated above, the interim rule now allows approved insurance providers to select the states in which they will participate in the premium reduction plan. However, within a state, the interim rule still requires that the premium discount be the same for all crops, plans of insurance, and coverage levels.

Comment: An interested party expressed concern that the premium reduction plan may, in fact, be a form of rebating, which is prohibited under most state laws. The commenter stated anti-rebating laws prohibit insurance agents and/or insurers from returning any portion of a commission as an inducement for an applicant to do business. The commenter stated that the language in § 400.715(b) and § 400.715(c) of the current proposed premium reduction plan, requiring that the rebate be distributed equally across ''all states and for all crops, coverage levels, policies or plans of insurance, or on any other basis'' does not provide or eliminate an inducement to do business for any particular applicant or group of applicants.

Response: As stated above, whether the previous premium reduction plan or the proposed or interim rule may allow a form of rebating that is prohibited under most state laws is not material. Under section 506(l) of the Act, any state law that is in conflict with the Act or any regulation promulgated by FCIC is preempted. As stated above, since section 508(e)(3) of the Act expressly allows premium discounts to be provided and is not expressly made subject to state law, the fact that such discounts may be an inducement to purchase insurance does not override this express authority. The provisions of the interim rule preempt state law.

Comment: Several approved insurance providers, farmers and agents suggested that with respect to § 400.715(b), redesignated as § 400.715(h), to simplify the programs accessibility and accountability the program should be offered to all states and crops that the approved insurance provider operates in. The commenter stated that due to recent accounting problems the program should remain the same throughout with the same reduction available to all states. This would also help in monitoring the program. A commenter also stated that all approved insurance providers operating under the premium reduction plan should do so within the A&O and reinsurance funds should not be filtered back into the program. A commenter stated that the intent of the program is to learn to operate below the A&O reimbursement by implementing creative and process altering systems or procedures that will make it easier for the farmer to participate. The ability of the approved insurance provider to document their plan in such a way that expense reductions can be easily

verified by RMA is essential to the integrity of the program. A commenter stated that this will also eliminate any concerns of discrimination that some have suggested would occur.

Response: RMA agrees with the commenters that offering a premium discount in all states and for all crops that an approved insurance provider services would simplify accounting and monitoring issues and ensure that all farmers would participate equally. This feature was included in the proposed rule. However, after considering the concerns raised by several commenters regarding the factors approved insurance providers must consider in deciding to enter or leave a state and how the requirement that approved insurance providers must provide the same premium discount in all states in which the approved insurance providers do business might affect this decision, as stated above, RMA determined that the adverse effects of not allowing an approved insurance provider to select the states in which it participates in the premium reduction plan or allowing the amount of premium discount to vary between states outweighed the potential benefit that a farmer may receive a premium discount in the future. Therefore, as stated above, the interim rule now allows for both selection of states and variability in premium discounts between states.

RMA also agrees with the comment that the integrity of the premium reduction plan depends on the ability of RMA to verify actual delivery expenses. As stated above, the interim rule strengthens this effort through the requirement that premium discounts be based on actual cost savings, the use of Expense Exhibits provided with the Plan of Operations, which can be verified through the statutory expense accounts and by requiring that the Expense Exhibits be audited and certified by an independent certified public accountant experienced in insurance accounting.

RMA agrees with the comment that the potential for discrimination will likely be reduced to the extent that an approved insurance provider can accurately report its expenses and RMA can verify the cost savings. Again, the interim rule includes provisions to ensure that these activities occur.

Comment: A few approved insurance providers commented that, with respect to § 400.715(c), there should not be any variability of discounts among states, crops, and insurance plans and policies. A commenter stated that variability requires complex accounting decisions. The commenter states that ''all states/all crops/all insurance plans and policies requirement'' also makes it easier for customers, and eases the accounting and other necessary tracking of its business systems. The commenter states it allows RMA to verify savings, and allows farmers to make informed business decisions without having to evaluate different pricing structures offered by multiple providers based on numerous factors. In addition, state variability would require additional, more complicated bookkeeping not only for the RMA, but also for the approved insurance provider and agent. It would also disadvantage captive agent approved insurance providers, for whom such bookkeeping would be even more burdensome and complex.

Response: While RMA expressed most of these same reservations in the preamble to the proposed rule, as stated above, RMA had to rethink its position because of the very real possibility that national approved insurance providers may pull out of certain states, leaving those farmers without access to any crop insurance protection. To protect these farmers and the financial stability of the approved insurance providers and crop insurance program, RMA is allowing approved insurance providers to select states in which they will participate in the premium reduction plan and allow a variation in premium discounts between states based on the actual cost savings.

As stated above, this will allow approved insurance providers to better determine where savings can be achieved while still allowing them to remain in compliance with the SRA. It should not be confusing to farmers because the premium discount within the state will remain the same and cannot vary by crop, coverage level or plan of insurance within a state.

To address the cost accounting issues, as stated above, RMA has found ways to simplify such accounting and reduce the burden on approved insurance providers. One is through the adoption of the alternative proposal, which eliminates the burden to project cost savings up front and allows premium discounts to be based on actual cost savings. Another simplification is the use of existing Expense Exhibits. Further, RMA has developed a standard formula that can be applied to all approved insurance providers to allocate certain costs and determine the amount of premium discount that could be paid in each state.

Comment: An approved insurance provider commented that, with respect to § 400.715(c), currently premiums charged by state, crop or plan of insurance differ based upon actuarially determined differences (loss costs, loss adjustment expense, etc.). The commenter states it does not follow that premium discounts should be identical as a percent reduction in premium. Farmers in states with the highest premiums, or plans of insurance with the highest premiums, would receive the largest discounts in terms of dollar savings. The commenter stated that business generating the largest losses would receive more discount. The commenter claimed that savings derived because of operating efficiencies should be affected based upon a dollar amount per policy or per crop insured. The fixed cost to process and service a policy is the same regardless of the amount of premium. The commenter states that only commissions vary by state so the discount should be the same unless the commissions are reduced by differing amounts between states.

Response: RMA agrees with the commenter that premiums charged by state, crop, plan of insurance, and coverage level vary considerably and that delivery cost structures for policies also differ considerable depending on these factors. RMA further agrees that for the policies that have the same amount of acreage, policies with higher losses pay higher premiums. However, the same is true for policies with higher coverage levels, different unit structures, additional options, revenue coverages, etc. Therefore, the higher premium is not necessarily as a result of higher actual losses but because of a higher risk of loss or the potential for a higher indemnity if a loss is paid. Further, premiums do not take into consideration loss adjustment expense. Such expense is part of the A&O subsidy the approved insurance provider receives or the CAT loss adjustment expense, which as stated above, is no longer taken into consideration under the premium reduction plan.

While it is possible to structure the premium discount as a set amount based on the fixed costs of delivery and savings, this process would not be fair or equitable. It could result in small farmers paying little or no premium, or actually receiving money back, and large farmers receiving very small premium discounts that are insignificant in terms of their operation. RMA has determined that a percentage of premium was the most fair and equitable payment structure because it allowed proportionally the same savings for all farmers and did not favor one size operation over another.

The commenter also suggested that premium discounts be allowed to vary by state only if the agent commission varies by state. RMA does not believe

the rule should be so restrictive. Under the formula, all costs will be placed into one of three categories: Agent compensation, loss adjustment expense or overhead. Loss adjustment expense and agent compensation are reported on a state basis so that reductions in either could allow for state variability. Therefore, no change is made based on this comment.

Comment: Several approved insurance providers, loss adjusters, farmers and interested parties commented that the requirement in § 400.715(c) that the amount of the premium discount offered may not vary between states, crops, coverage levels, policies, or plans of insurance, or any other basis fails to recognize the significant differences between states, crops, coverage levels, policies, plans of insurance. A commenter stated that it does not appear feasible to mandate non-variable efficiencies in an environment full of variable costs. A commenter stated that RMA should not expect costs to be the same for corn versus a fruit or tree policy and policies in Iowa versus those in Florida. A commenter stated that this proposed regulation may have the unintended result of an approved insurance provider not doing business in states that are not profitable and therefore depriving or limiting the choices of farmers in those states relative to crop insurance. A commenter also stated that regional approved insurance providers, operating only in historically profitable states, would have an unfair advantage over national operations in determining efficiencies and discounts. A commenter stated that consideration should be given to allow for these cost variances and a differing reduction in premium based upon those factors.

Response: RMA agrees that the proposed rule, which required the same premium discount for all states, could result in some approved insurance providers deciding to withdraw from certain states. RMA also agrees that this provision could favor regional over national approved insurance providers. Consequently, the interim rule allows the premium discount to vary by state based on the actual cost savings and for approved insurance providers to select those states in which to participate in the premium reduction plan. However, the premium discount within a state will remain the same and may not vary by crop, coverage level or plan of insurance. While the costs may be different for the different crops, costs are not reported by crop, coverage level or plan of insurance. Therefore, complex accounting rules would have to be developed, which is the very thing RMA has sought to avoid and commenters have stated would be detrimental to the program because of the undue burdens that would be imposed and the potential for misallocation of costs.

Comment: An agent commented on § 400.715(c) and expressed concern about the equity of the premium reduction plan in terms of applying the discount to various sizes of farm operations and also within various states where loss ratios can vary by incredible margins. As it stands now, farmers in SW Nebraska would receive the same discount as those in say Eastern Iowa. The commenter suggested that RMA check some loss ratios and justify that because it can't be justified.

Response: As stated above, now approved insurance providers will be able to select the states in which they participate in the premium reduction plan and can vary the amount of premium discount between states based on the actual cost savings. However, the variation in premium discount between states is based on the actual cost savings achieved in each state, not the loss ratio of the state. Section 508(e)(3) of the Act only allows premium discounts to be based on the cost savings of the approved insurance provider and while loss ratios may play a factor in the approved insurance provider's election to participate in a state or the amount of cost savings that can be achieved, it cannot be used to determine the amount of the premium discount.

Comment: An approved insurance provider commented that with respect to § 400.715(c) FCIC is incorrect that the Act requires uniformity with respect to the amount of the reduction and prohibits distinctions based on states, crops, coverage levels, policies, plans of insurance. The commenter states that although the language may support FCIC's contention that the premium discount must correspond to the efficiency underlying that discount, nothing in section 508(e)(3) of the Act precludes an approved insurance provider from establishing different premium discounts on a state-by-state or plan-by-plan basis.

Response: Section 508(e)(3) of the Act states that premium discounts are subject to the limits and procedures established by FCIC. The requirement in the proposed rule that the same premium discount be offered across all states, crops, coverage levels, policies, and plans of insurance was such a limitation based on the concerns of RMA that to allow variability would require complex cost accounting rules that may not be suitable for all the approved insurance providers' business operations, would be burdensome to administer by both RMA and the approved insurance provider, and could adversely affect program integrity because of the potential for misallocation of costs.

As stated above, RMA has reconsidered its position to require the same premium discount be provided in all states in which the approved insurance provider does business and the interim rule allows the approved insurance provider to select the states in which to participate in the premium reduction plan and allows variation in the amount of premium discount between states based on the actual cost savings. This is because, as stated above, RMA found ways to eliminate most of the concerns regarding the burdens and other risks of such an approach. However, RMA is retaining the limitation of varying the premium discount by crop, coverage level or plan of insurance because, as stated above, costs are not currently reported in this manner and all the concerns raised by RMA would still exist. Cost accounting rules would be complex and allow for the potential of misallocation of costs and there would be significant burdens on RMA and the approved insurance provider to administer the program.

Comment: An approved insurance provider commented that with respect to § 400.715(c) the most persuasive evidence supporting the argument that approved insurance providers should be permitted to vary premium discounts by state and by plan of insurance is the A&O subsidy provided by FCIC. The A&O subsidy paid by FCIC varies by plan of insurance and by coverage level. For example, in 2005, the A&O subsidy for the revenue plans ranges from 21.0 percent (75 percent coverage level or less) to 19.6 percent (85 percent coverage level). By contrast, the A&O subsidy associated with the APH plan of insurance varies between 24.4 percent (75 percent coverage level or less) to 22.8 percent (85 percent coverage level). The approved insurance provider asked if FCIC recognizes the differences in plans of insurance and coverage levels for purposes the A&O subsidy, why FCIC disregards those same differences for purposes of the premium reduction plan.

Response: RMA agrees that the A&O subsidy varies by plan of insurance and by coverage level. However, section 508(e)(3) of the Act states that premium discounts must be based on the savings achieved by the approved insurance provider, not the manner in which the A&O subsidy is paid. While variation by coverage level or plan of insurance may be permitted under the Act, premium

discounts are subject to the limits established by RMA and RMA must be able to verify that premium discounts correspond to cost efficiencies. As stated above, costs are not reported by the approved insurance provider by coverage level or plan of insurance. Therefore, there is no way to ensure that the cost savings corresponded to the premium discount on a coverage level or plan of insurance bases without complex accounting rules. As stated by other commenters, RMA must avoid the need for complex accounting rule. While RMA has avoided the need for such rules with respect to state selection and variability of the premium discount between states, there is no easy way to further break down these costs within a state by coverage level or plan of insurance.

Comment: An approved insurance provider contends that, with respect to § 400.715(c), FCIC has a statutory obligation to permit approved insurance providers to vary the premium discount by product and coverage level. More specifically, section 508(e)(3) of the Act provides that an approved insurance provider may offer a premium discount ''[i]f an approved insurance provider determines that the provider may provide insurance more efficiently than the expense reimbursement amount established by the Corporation.'' The term ''expense reimbursement amount'' refers to the A&O subsidy, and, as shown above, the A&O subsidy varies by insurance plan and coverage level. Thus, to provide insurance more efficiently than the 21.0 percent expense reimbursement amount established by FCIC for revenue plans may necessitate different cost reductions than are necessary to provide insurance more efficiently than the 24.4 percent expense reimbursement amount established by FCIC for the APH plan. In short, to comply with section 508(e)(3)'s requirement that the efficiency be judged in relation to the expense reimbursement amount, FCIC must allow approved insurance providers to tailor the premium discount to plan of insurance and coverage level. The commenter states that FCIC was so concerned with satisfying the condition established in the second clause of the first sentence in section 508(e)(3) that it neglected to implement the first clause.

Response: The flaw to the commenter's logic is that even though the A&O subsidy is tied to the coverage level or plan of insurance, the expenses are not necessarily on the same basis. Since costs are not reported by coverage level or plan of insurance, complex accounting rules would need to be developed that would impose a significant burden on approved insurance providers. Further, because there is no way to verify such costs, the possibility of misallocation is significant.

While RMA agrees that section 508(e)(3) of the Act does not preclude premium discounts based on coverage levels or plans of insurance, that section does give RMA the authority to impose such rules and limitations as are necessary to protect the integrity of the program. Not allowing variability of premium discounts by coverage level or plan of insurance is such a limitation. Therefore, no change has been made in response to this comment.

Comment: The approved insurance provider commented that, with respect to § 400.715(c), the proposed rule oversimplifies the manner in which an approved insurance provider might reduce costs. To wit, the proposed rule includes, as an example, this statement: ''if the approved insurance provider can reduce costs by 2.5 percent, such reduction must be provided to all policyholders in all states.'' The commenter states that this example assumes, incorrectly, that all approved insurance providers gauge their respective costs on a program-wide basis. In fact, the commenter states it calculates its costs on a state-by-state and product-by-product basis. Accordingly, the approved insurance provider's ability to decrease costs by 2.5 percent on corn in Iowa does not correlate to a 2.5 percent reduction in the costs associated with nursery in Florida.

Response: The proposed rule contained the requirement that all premium discounts be the same because of RMA's concern stated above regarding the projections of costs, the burdens on approved insurance providers to administer the program, and the potential for misallocation of costs. RMA considered all the comments on this issue, including the comments regarding the variability of costs between states, and determined that it could address these concerns and still allow variability of premium discounts by state, which it did.

However, even though the commenter claims it calculates costs on a state-by-state and plan of insurance basis, RMA has no way of knowing whether all costs are calculated in this manner. For example, RMA knows that agent compensation and loss adjustment expenses are calculated and accounted for on a state-by-state basis but it does not know whether such overhead costs, other employee or contractor compensation, etc., is also calculated and accounted for on a state-by-state or insurance plan basis. RMA also does not know whether all approved insurance providers may calculate or accounted for costs in this manner.

Further, even if approved insurance providers did calculate costs in this manner, agent compensation and loss adjustment expenses may be reported to RMA on a state-by-state basis, it is not reported on a plan of insurance basis. Further, all other costs are reported on a book of business basis. Therefore, even if approved insurance providers calculate such costs on a state-by-state basis, RMA has no way to verify whether such costs were correctly allocated. This means that complex accounting rules would be required and the burden on the approved insurance providers and RMA would significantly increase. This is precisely the situation that RMA has sought to avoid in the interim rule.

Comment: An approved insurance provider commented that, with respect to § 400.715(c), the proposed rule's prohibition against variances in premium reduction plan submissions is at odds with the experts that reviewed the proposed rule prior to its publication. The commenter asked that if the expert reviewers recognize that the difference between states, crops, policies, and plans of insurance, why does FCIC not and on what basis did FCIC reject these suggestions.

Response: The expert reviewers recognized that costs varied between states, policies and plans of insurance. RMA acknowledges that this is correct. However, the expert reviewers did not examine the complex cost accounting rules that would be required to verify and approve savings on this basis or assess the burden on approved insurance providers or RMA to administer the program in this manner. RMA has done this assessment and determined that it could structure a rule that would permit variability among states because certain costs are already allocated and reported by state and the others could be allocated by state through a formula designed by RMA.

However, as stated above, because costs are not reported on a crop or plan of insurance basis, RMA has no way to verify that such costs are correctly allocated. Further complex accounting and allocation rules would be required and the burdens on RMA and the approved insurance providers would increase significantly. This is precisely the situation that RMA has sought to avoid in the interim rule.

Section 400.716

Comment: An interested party commented that regulators are always

concerned about the possibility of financial stress placed on approved insurance providers who feel they have to reduce essential operating costs in order to compete in the marketplace. Such competitive pressures can reduce competition in the marketplace as approved insurance providers are no longer able to write business profitably, or in the worse case scenario, causes insolvency, which is a burden to the regulatory authority, state guaranty funds, the RMA and not least, the consumer. Transparency of the efficiency and constraints on what types of expenses can be included in the premium reduction plan are essential to the integrity of such a program and the financial well being of the participating approved insurance providers. The commenter states the language in § 400.716 sufficiently documents the approved insurance provider's premium reduction plan such that the extent and nature of the efficiencies are known and understood by regulators.

Response: RMA shares the concern of the commenter that the provisions of the interim rule need to protect against the possibility that increased price competition under the premium reduction plan would lead to unnecessary insolvencies. RMA has reduced the financial stress on approved insurance providers to cut costs in essential operations in several ways. One is to only require premium discounts to be based on actual costs savings and no promise that any discount will be made unless savings are achieved. This will reduce the stress on approved insurance provider to fund promised premium discounts. Another way is the allowance of approved insurance providers to select the states in which they will participate in the premium reduction plan and vary the amount of premium discount between states. This will allow approved insurance providers to select those aspects of its operation where it can safely cut costs without jeopardizing their ability to comply with all requirements of the SRA. RMA has also retained the premium discount maximum of four percent.

RMA also agrees with the commenter that transparency and consistency in the application of expense reporting is essential in a sound premium reduction plan and, as stated above, the use of existing Expense Exhibits that are verifiable and certified and the use of a standard formula applicable to all approved insurance providers to determine the amount of premium discounts for each state creates a transparent and consistent process.

Comment: An interested party commented that the initial application process should include an analysis of the impact on how the premium discount would affect minority farmers.

Response: As stated above, the initial application process has been revised significantly and now approved insurance providers will only be requesting the opportunity to be able to offer a premium discount in the event it can deliver the Federal crop insurance program for less than the A&O subsidy. However, RMA has taken several measures to ensure that small, limited resource, women and minority farmers are not adversely impacted by the premium reduction plan. RMA has retained the requirement that approved insurance providers submit marketing plans that demonstrate how they will market the premium reduction plan to small, limited resource, women and minority farmers. RMA has also added provisions that such marketing plan must be addition to any solicitation done by the agent and that if RMA discovers that the marketing plan is not effectively reaching such farmers, RMA can require remedial measures or impose sanctions. RMA has also clarified that all farmers must receive at least the level of service required by the SRA and approved procedures and added consumer complaint provisions that allow farmers to complain directly to RMA.

Comment: An approved insurance provider commented that § 400.716 addresses the contents of a revised Plan of Operations. The commenter stated that the reporting requirements detailed in this rule will substantially add operating expense to the approved insurance provider and works counter to the intent of generating operating efficiencies to pass along to farmers in the form of a premium discount. The commenter states that subsections (h) and (i) are particularly onerous and that the alternative proposal offered by RMA for consideration would be less costly to administer and would assure that the efficiencies derived are actual rather than projected.

Response: As stated above, the initial application process has been revised significantly and now approved insurance providers will only be requesting the opportunity to be able to offer a premium discount in the event they can deliver the Federal crop insurance program for less than the A&O subsidy. Further, as stated above, RMA has adopted the alternative proposal, which will significantly reduce the burdens on the approved insurance provider. In addition, the requirements in subsections (h) and (i) have been removed from the interim rule and the process considerably streamlined.

Comment: An approved insurance provider asked, with respect to § 400.716(e), redesignated § 400.716(c), if RMA will be advising approved insurance providers of specific standards or criteria that must be met for marketing to small farmers, limited resources farmers, women and minorities. The commenter asked if RMA will test such standards or criteria to determine if the marketing plan is acceptable to prevent discrimination. The commenter also asked if the approved insurance provider does not meet the RMA standards, will the approved insurance provider be assessed penalties.

Response: RMA has revised redesignated § 400.716(c) to clarify that the marketing plan must identify the media used, that such media must be designed to reach small, limited resource, women and minorities farmers, and that such advertising must be in addition to any solicitation done by the agent. However, RMA cannot set specific standards because it would be impossible for RMA to know in advance of a request being received what would be the most appropriate form of media in a particular market. The approved insurance providers, because they have local personnel such as agents or loss adjusters, would be in the best position to know how to reach these farmers. Further, RMA recognizes that each approved insurance provider will face different circumstances, depending on its geographical presence and other factors. RMA will provide feedback during the review process if the marketing plan is deemed inadequate in providing a level of outreach that is commensurate with the size and geographical presence of the approved insurance provider.

Regarding whether RMA will test to determine whether the marketing plan is acceptable to prevent discrimination, the purpose of the marketing plan is to ensure that all farmers are aware of how to have access to a premium discount in a state in which it is offered. RMA will monitor indicators of possible discrimination and the success of the marketing plan under the SRA, based on the number of consumer complaints, and a comparison of the composition of the approved insurance providers' books of business in the area. An ineffective marketing plan could result in the imposition of remedial measures or sanctions.

Comment: An interested party commented that, with respect to § 400.716(e), redesignated § 400.716(c),

a marketing plan must be a minimal requirement of the program. Most farmers participating in the crop insurance program obtain crop coverage as well as marketing and other farm related educational advice from their trusted agents. The commenters stated that minority farmers should have access to this same level of added information. The commenter also stated that this requirement helps the agency to implement section 10708 of the 2002 Farm Bill, which states that approved insurance providers should actively seek the assistance of community based organizations in such data collection and analysis.

Response: RMA agrees that an adequate marketing plan should be included as a condition for participation in the premium reduction plan and the interim rule reflects this requirement. RMA has also referenced community based organizations to identify them as a valuable resource to reach small, limited resource, women and minority farmers. Further, the interim rule will provide a process for farmers to complain about their treatment directly to RMA.

Comment: An approved insurance provider comments that, with respect to § 400.716(h), to ensure that efficiencies are evaluated accurately, any efficiencies related to agent compensation be evaluated on the basis of information that must be reported to the IRS and counted on 1099 tax forms. The commenter also notes there is a conflict here in terms of reporting—annual basis vs. crop year basis—for bonuses which could be paid to agents after the crop season is over and after providers have accurately determined the amount of realized profits, if any.

Response: As stated above, subsection (h) has been removed from the rule. However, with respect to the demonstration of actual cost savings, the current Expense Exhibits provided with the Plan of Operations requires that an approved insurance provider submit information on both a calendar and reinsurance year basis. RMA also provides instructions as to how costs should be allocated between these formats. Therefore, since these existing Expense Exhibits will be used for determining cost efficiencies and the amount of premium discounts, no conflict exists. Further, the adoption of the alternative proposal in the interim rule eliminates concerns regarding costs incurred after the crop year. The cost accounting occurs after the end of the reinsurance year when a majority of all expenses, including bonuses, have been paid, and the approved insurance provider is required to report an estimate of any costs that have not yet been paid. RMA will be able to determine whether costs have improperly been shifted by comparing the costs reported on the various statutory accounting statements and Expense Exhibits. If there is improper reporting, RMA may impose sanctions on the approved insurance provider.

Comment: An interested party commented that RMA states that the workload on RMA and approved insurance providers to identify cost allocations and determine whether the projected cost savings from efficiencies are reasonable and correspond to the premium discount in the state would be enormous. The commenter states that this conflicts with RMA's statement that ''in accordance with §§ 400.716(h) and 400.719(a)(6) of the proposed rule, RMA would track the expense performance of the approved insurance provider at the state level to ensure that costs are reduced in each state by an amount that is at least equal to the premium reduction.'' The commenter states that §§ 400.716(h) or 400.719(a)(6) do not say anything about a state level accounting requirement yet it is clear that RMA intends to enforce an ''enormous'' expense on the industry.

Response: As stated above, § 400.716(h) has been removed. Further, by adopting the alternative proposal in the interim rule, RMA has removed the burdensome requirement for the approved insurance provider to forecast and justify proposed efficiencies for the reinsurance year and for RMA to verify the reasonableness of such forecasts and then to go through the same process at the end of the reinsurance year. Under the interim rule, cost efficiencies are to be determined based on information currently reported in the Expense Exhibits provided with the Plan of Operations and verified after they have been realized. This will significantly reduce the workload on RMA and the approved insurance providers.

Further, although RMA now allows variations in premium discounts between states, it has developed a standard formula that can be applied to all approved insurance providers and will allow the allocation of certain costs by state. This will reduce the burden on approved insurance providers to maintain and report certain costs by state that are currently reported on a book of business basis. This formula will be provided to the approved insurance providers through procedures.

Comment: An approved insurance provider commented that in § 400.716(i) a financial reserve of 25 percent of the projected savings as a contingency fund seems excessive, except for years such as from 2004 to 2005 in which the commodity prices are significantly dropping. The commenter asked if the 25 percent reserve was determined from judgment only or were there calculations used to determine this percentage.

Response: The adoption of the alternative proposal in the interim rule eliminates the need for § 400.716(i) and it has been removed from the interim rule.

Comment: An approved insurance provider commented that, with respect to § 400.716(i), it supports this provision, but suggests that it be clarified to recognize that additional ''income'' may come from contracts or third party agreements executed by the approved insurance provider that are designed to provide a reserve for such a contingency.

Response: The adoption of the alternative proposal in the interim rule eliminates the need for § 400.716(i) and it has been removed from the interim rule.

Comment: An approved insurance provider commented that § 400.716(i) would not account for a major misrepresentation in the premium reduction plan. The commenter stated that if such a plan is necessary, the approved insurance provider should be responsible for the entire amount of the savings and be willing to provide access to those additional funds.

Response: The adoption of the alternative proposal in the interim rule eliminates the need for § 400.716(i) and it has been removed from the interim rule.

Comment: An agent commented that with respect to § 400.716(l), if agents have state approval for marketing the product, then this plan will never happen in Kansas. The commenter stated that its agency proposed a plan to allow agents to offer $20 gift cards to anyone wishing to stop by an agent's office for an auto insurance quote. The commenter stated that this proposal never made it out of committee because the concept was rejected on the basis of violating existing rebating statutes. The commenter claims this example also has implications for § 400.719(a)(10), which says that the premium reduction plan must not violate applicable state laws concerning solicitation and sale of insurance. The commenter states that if it cannot get approval to offer a $20 gift card how can anyone be expected to be able to get approval to offer a premium discount for hundreds of dollars.

Response: Section 400.716(l) required approved insurance providers to submit to the states its marketing strategy

submitted under proposed § 400.716(d). However, with the adoption of the alternative proposal, RMA determined that such marketing strategy was no longer required because premium discounts would be based on actual cost savings and approved insurance providers should not be locked in regarding how those savings are achieved as long as all provisions of the SRA and approved procedures are complied with. Therefore, proposed § 400.716(l) has been removed from the interim rule. RMA will work with state insurance regulators, which have the responsibility to monitor marketing conduct with respect to any advertising and promotion of the premium reduction plan and ensuring that all agents are properly licensed by the state.

Comment: An agent commented that the requirement that approved insurance providers provide their premium reduction plan to the state to determine whether the licensing and conduct of the agents complies with state law ignores the fundamental principle of state law that all agents must be licensed if they sell, negotiate or solicit any type of insurance.

Response: As stated above, proposed § 400.716(l) has been removed from the interim rule. RMA agrees that the states will still monitor market conduct with respect to any advertising and promotion of the premium reduction plan and continue to ensure that all agents are properly licensed by the state.

Comment: An interested party commented the language in § 400.716(l) requiring the approved insurance provider to provide a copy of its marketing strategy to the State Insurance Department for review in all states in which the approved insurance provider does business is crucial for state regulators to perform their market conduct regulatory functions.

Response: Since a review of the marketing strategy by the State is no longer required, proposed § 400.716(l) is rendered moot. However, the interim rule makes it very clear that approved insurance providers and agents must comply with all requirements of the SRA and approved procedure and RMA agrees that the RMA and the states already share responsibility to monitor market conduct with respect to advertising and promotion and ensure that all agents are properly licensed by the state.

Comment: A few approved insurance providers asked if one state does not approve the marketing plan, whether the plan can be offered in the other states as an exception to the premium reduction plan rule that requires all policies be allowed the discount. A commenter stated that requiring an approved insurance provider to provide the state approved insurance provider a copy of its marketing strategy would not only be confusing, but burdensome to the state government. Furthermore, the commenter stated that if the state insurance department elected to review the plan, their timing could be long after the initiation of the plan. The commenter asked what happens to the policies that have already been sold. A commenter stated it supported the idea that if one state rejects the marketing plan, the approved insurance provider cannot offer the premium reduction plan.

Response: As stated above, proposed § 400.716(l) has been removed from the interim rule. RMA agrees that the states will continue to monitor market conduct with respect to advertising and promotion of the premium reduction plan and ensure that all agents are properly licensed by the state. This responsibility is no different than their existing responsibility.

Comment: A few approved insurance providers and interested parties commented that an issue that must be addressed is potential conflicts between federal and state law and among the states. If adopted, § 400.716(l) would require approval of various State Departments of Insurance with respect to marketing issues, including the licensing of agents and the conduct of agents in the solicitation and sale of insurance. The commenter states that this approach is understandable, especially given the potential for premium reduction plan abuse and the risk of illegal rebating. On the other hand, the federal crop insurance program is national in scope and, in accordance with 7 U.S.C. 1506(l) and 7 CFR 400.352, virtually all state regulation is preempted. Commenters stated that there are substantial risks that individual states would view the premium reduction plan offerings by multi-state approved insurance providers differently. Because state-by-state review explicitly is required in the proposed rule, RMA is inviting this level of regulatory conflict and resulting confusion. If this approach is to be utilized, RMA should not publish a final rule until it has established a mechanism for resolving all such potential conflicts among state regulators. The commenter also states that there is a distinct risk that market conduct issues will be viewed differently between RMA and a particular state. While the Supremacy Clause of the Constitution generally should favor RMA's position, the commenter states that the text of 7 CFR 400.352 is not sufficiently clear to support this proposition. Also, the commenter suggests that the text of § 400.716(l) of the proposed rule could be viewed as a voluntary surrender by RMA of its supremacy powers. At a minimum, the proposed premium reduction plan rule introduces a very complex set of considerations involving the interplay of federal and state regulation of approved insurance providers, and RMA should think this through very carefully and strengthen the proposed rule before promulgation as a final rule. Such strengthening must address both the breadth of federal preemption and the details of resolving potential federal-state conflicts.

Response: As stated above, proposed § 400.716(l) has been removed from the interim rule. Further, nothing in the interim rule changes the relationship between state and Federal law with respect to the premium reduction plan. Federal preemptive authority under the Federal Crop Insurance Act is limited, not general. As a result under the interim rule, states will still have the same responsibility to monitor market conduct with respect to any advertising and promotion of the premium reduction plan and ensure that all agents are properly licensed by the state. RMA looks forward to working with state insurance regulators to address any advertising or market conduct concerns that arise in the implementation of this regulation.

Section 400.717

Comment: An interested party commented that newly formed approved insurance providers would be required to amortize start-up costs up to three years in the premium reduction plan. The commenter is concerned that including start-up costs in the premium reduction plan will create a disadvantage to start-ups as they compete with larger established approved insurance providers who are able to pass along efficiencies under the plan. This provision could deter approved insurance providers from entering the market and thereby reducing competition.

Response: RMA shares the concern of the commenter that the interim rule should not contain unnecessary barriers to a new approved insurance provider participating in the premium reduction plan. However, the intent of the interim rule is to provide neither established nor new approved insurance providers with a competitive advantage, and to exclude start-up costs could provide a competitive advantage to new approved insurance providers, especially when established approved insurance

providers are still incurring the same type costs because of updating systems or equipment, etc. The interim rule must recognize that there may be some costs incurred regardless of whether the approved insurance provider is new or established but that generally the costs to create a system are generally larger than those for updating or modifying a system. Therefore, three year amortization represents a reasonable compromise in that such start-up costs must be reported on the Expense Exhibits but that all the costs will not count against one reinsurance year.

Comment: An approved insurance provider objects to the provision that grants new approved insurance providers the right to amortize so-called ''one time start-up costs.'' The costs briefly described in the parenthetical are costs that all approved insurance providers incurred when they entered the crop insurance program. The commenter asked why FCIC affords these new approved insurance providers benefits not provided the existing approved insurance provider and how FCIC rationalizes providing new approved insurance providers with an economic advantage. In proposing the premium reduction plan regulations, FCIC claims to be ''striving to develop procedures that provide a level playing field.'' Allowing new approved insurance providers the ability to amortize start-up costs, a benefit not afforded existing approved insurance providers, is inconsistent with this purported goal.

Response: RMA agrees that some of the costs included as start-up are incurred by all approved insurance providers when they start up. However, the premium reduction plan identifies whether an approved insurance provider would be able to deliver the Federal crop insurance program in the current reinsurance year. If the start-up costs were not incurred in the current reinsurance year, they would have no bearing on whether the approved insurance provider has such an efficiency for such year. Therefore, new approved insurance providers are not being provided a competitive advantage. In fact, if RMA did not allow the amortization of such costs, new approved insurance providers would be at a competitive disadvantage because they would be incurring costs that established approved insurance providers would not. This means the new approved insurance providers' A&O costs would be higher, decreasing the likelihood they could achieve an efficiency. The three year amortization is a reasonable compromise that RMA anticipates will neutralize these factors in favoring neither existing nor new approved insurance providers in determining whether approved insurance providers can pay premium discounts.

Comment: An approved insurance provider concurs with RMA clarification limiting new entrants to those that have not participated in the program previously or are not affiliated with a managing general agent, another approved insurance provider or other such entity that already has the infrastructure necessary to deliver crop insurance. Requiring new entrants to include startup costs over a three-year period shows a commitment to new entrants without unfairly discriminating against approved insurance providers involved in the program since its inception.

Response: RMA agrees that allowing amortizing of start-up costs would allow new approved insurance providers to enter the program and compete with existing approved insurance providers without a competitive advantage or disadvantage.

Comment: An approved insurance provider commented that, with respect to § 400.717, approved insurance providers would amortize over one year to develop a higher ''efficiency'' in year two. The commenter stated that RMA's ''level playing field'' objective would suggest they permit new entrants to exclude those costs.

Response: The purpose of the amortizing is not to create efficiencies. The purpose is to put new and existing approved insurance providers on relatively the same footing with respect to reporting the A&O costs for the crop year. Further, the interim rule requires that if the approved insurance provider is going to amortize start-up costs, they must be amortized equally over the three years. However, any new approved insurance provider could elect not to amortize the start-up costs and report them all in the first year. For every year thereafter, the approved insurance provider would be treated as every other approved insurance provider and would have the same opportunity to achieve savings.

RMA considered allowing new approved insurance providers to exclude start-up costs but it realized that existing approved insurance providers still incur similar costs, such as updating or modifying systems. Therefore, it would be inequitable to exclude all such costs. However, since such costs are generally higher with start-up than maintenance, amortization provides a more equitable solution.

Comment: An approved insurance provider commented that the proposed rule strikes the right balance between allowing new entrants into the crop insurance marketplace, but with adequate controls to ensure that farmers are protected.

Response: RMA agrees with the comment.

Section 400.718

Comment: An agent does not believe September 1, 2005 is a realistic date. The commenter states the date should be pushed back considerably because the timeline would not support this as a realistic date. The commenter hopes that after receiving comments to the proposed rule it will conduct another round of review and comments. The commenter suggested Congress may want to hold hearings.

Response: As stated above, adoption of the alternative proposal has permitted RMA to significantly reduce the reporting requirement and burden on approved insurance providers. Many of the requirements in the proposed rule regarding the cost accounting, state review, etc., have been removed and essentially all approved insurance providers must do is select the states in which they will participate in the premium reduction plan and develop and submit their marketing plans.

However, because RMA was unsure of the date the interim rule would be published, it revised the provision to require RMA to respond not later than 30 days after the date the approved insurance provider submits its request for eligibility to offer a premium discount under the premium reduction plan.

With respect to the solicitation of additional comments, RMA recognizes that additional comments may be desirable to determine whether the premium reduction plan is operating properly and, therefore, has elected to implement the rule as an interim rule. This would allow RMA to solicit additional comments.

However, there is no legal basis for RMA to not implement the premium reduction plan for the 2006 reinsurance year. As stated above, section 508(e)(3) of the Act obligates RMA to consider all requests by approved insurance providers. The interim rule simply provides the framework under which to consider such requests. Further, as stated above, RMA has responded to the comments by creating a more simple, streamlined, less burdensome, more verifiable rule that should benefit all participants.

Section 400.719

Comment: Several agents and interested parties asked that any and all applications for the premium reduction

plan be considered by the full FCIC Board. RMA would still be able to evaluate the applications. The commenter also asked that a guideline be added that fully reviews the impact to approved insurance providers and agents.

Response: The FCIC Board has the authority to review requests to participate in the premium reduction plan and approve the payment of premium discounts. However, as with many of the day-to-day operations, it has chosen to delegate that authority to the Manager of FCIC, *i.e.*, the Administrator of RMA. The Board has not rescinded this delegation because the changes to the interim rule have mitigated many of the concerns of the Board, as expressed in the preamble, and that RMA has the personnel and knowledge to best administer the program. However, the Board has asked the FCIC Manager to review with the Board the agency's analysis of the premium reduction plan requests before the Manager determines the approved insurance provider is eligible to participate or approves the payment of any premium discount under the existing delegation.

With respect to adding a requirement for an impact review, it is RMA's position that an approved insurance provider would likely already consider the full impact of the premium reduction plan on it, its competition, and its agents before requesting to participate in the premium reduction plan. Further, many of the changes to the interim rule were in response to comments expressing concerns regarding these impacts. In addition, through publication of the rule as an interim rule, RMA has left open the possibility that it will solicit additional comments regarding the impacts of the rule.

Comment: An approved insurance provider commented the discount must be offered ''in all states where the approved insurance provider does business.'' The commenter asks why the provision indicates that the reduction ''correspond to the location where the premium reduction is offered.'' The commenter asserts that this statement in the standards for approval appears inconsistent with the intent discussed in the proposed rule.

Response: The requirement that any premium discount correspond to the cost efficiency comes directly from 508(e)(3) of the Act. The legislative history of this section confirms that the ''corresponding'' principle was added intentionally and, therefore, must be given meaning.

However, as stated above, RMA agrees that requiring the same premium discount in all states in which the approved insurance provider does business could create a strain on the business operations of the approved insurance providers by requiring them to achieve the same cost savings in each state. As stated above, RMA has eliminated this requirement and now allows approved insurance providers to elect the states in which it will participate in the premium reduction plan and allows variation of premium discount among states. As stated above, this is to allow approved insurance providers to better evaluate their operations to determine the best means to achieve savings while still complying with all requirements of the SRA and approved procedures.

Comment: An approved insurance provider commented that proposed § 400.719(a)(7)(ii) requires that ''The efficiency must not be derived from any marketing or underwriting practices that are unfairly discriminatory.'' The commenter states that in order for premium reduction plans to not be unfairly discriminatory, all approved insurance providers must be able to offer the plans. Otherwise, all farmers do not have equal access to premium discounts. Furthermore, unless all approved insurance providers are approved to offer premium discount plans the situation will exist that an agent representing more than one approved insurance provider may have one approved insurance provider approved and others not approved for premium discount plans. Agents will be able to write some farmers with discounts and others without. There will be no guarantee that all farmers have been offered the discount plan.

Response: As stated above, unfair discrimination occurs when farmers are denied access to the crop insurance program or the premium reduction plan. Since such conduct is regulated under the SRA, it was not necessary to reiterate the requirement here, especially since approved insurance providers no longer report the actions they propose to take to achieve the cost efficiency when requesting eligibility for the opportunity to offer a premium discount. Therefore, § 400.719(a)(7)(ii) has been removed. In addition, equal access to the premium reduction plan is accomplished through other means, such as the marketing plan.

With respect to the concern that unfair discrimination occurs if not all approved insurance providers participate in the premium reduction plan or agents write for more than one approved insurance provider, which may not participate, as stated above, there is a difference between being treated differently than other farmers where the premium reduction plan is available and residing in a state where no approved insurance provider may be participating in the premium reduction plan. The former would be prohibited and, as stated above, provisions have been added to ensure that all farmers in a state are paid the same percentage of premium discount, have awareness and access to the premium reduction plan, do not suffer from reduction in service, etc. In addition, as stated above, agents that write for more than one approved insurance provider must notify their customers of all the approved insurance providers they write for that are participating in the premium reduction plan in the state so farmers can make informed decisions.

Comment: An approved insurance provider comments that, with respect to proposed § 400.719(a)(9), now redesignated § 400.718(c)(2), it very much supports the need to actively market to small, limited resource, women and minority farmers, as defined above. However, the commenter states it is concerned that as the size of acreage declines, so do the savings. The commenter respectfully suggests that the standard should focus only on whether the plan is reasonable in its approach and not on the marketing ''effectiveness'' of the plan's reach. In cases where it appears that the plan's reach is not working effectively, the RMA will work with the approved insurance provider to strengthen the plan.

Response: RMA agrees that when the marketing plan is submitted, it will be difficult to determine whether it effectively reaches small, limited resource, women, and minority farmers. Therefore, RMA has revised the provision to require that the marketing plan be designed to effectively reach such farmers. However, size of the farming operation and declining savings are not considerations when determining whether a marketing plan is designed to reach small, limited resource, women, and minority farmers. The interim rule requires the approved insurance provider to use the appropriate media to reach such farmers. Further, RMA has added provisions that state that RMA will monitor the marketing plan and if RMA determines the marketing plan is not effective, it can require remedial measures or impose sanctions, as appropriate.

Comment: A few approved insurance providers stated RMA is requiring that the approved insurance provider not

reduce its service to the insureds. The commenter asked how RMA will audit to determine that service is remaining constant to their farmers and whether RMA has standards of service developed. A commenter asked how FCIC measures ''service.''

Response: As stated above, service is required to be provided in accordance with the SRA and approved procedures. Any violation with one of these requirements would be considered a reduction in service. Therefore, there are clear standards that are applicable to all approved insurance providers and agents. RMA will monitor service as it currently does through the SRA and RMA has added provisions to the interim rule to allow consumer complaints to be made directly to RMA.

Comment: An approved insurance provider and interested party commented that, with respect to proposed § 400.719(a)(11), now redesignated § 400.718(c)(4), the one approved premium reduction plan provides commissions for agents substantially below what are offered to agents from other approved insurance providers. The commenter states that agents have reported that they cannot afford to provide the same level of service to farmers. Fewer visits to the farms and less assistance is offered to the farmers to complete the complex paperwork and advise the farmers concerning which plan is best suited to them. The commenter stated that the premium reduction plan and the entire Federal crop insurance program is a very complex line of insurance and it requires well trained agents to assist the farmers in making the appropriate decisions and following all the rules and procedures. Less service is harmful to the interests of farmers and potentially undermines the integrity of the crop insurance program.

Response: As stated above, the interim rule outlines the standards for service that must be maintained for an approved insurance provider to participate in the premium reduction plan, which are identical to those needed to operate under the SRA. Therefore, at a minimum, all farmers will receive at least the level of service that would permit them to understand the available plans of insurance, program requirements, etc. This should ensure that program integrity is maintained.

As stated above, RMA recognizes that some agents may wish to offer special educational and other services above these standards to differentiate themselves from other agents in a competitive marketplace. This is part of cost competition; can the same service be provided at a better price or can superior service be provided for the same price. It is up to the marketplace to determine the value of these additional services and whether the farmer wants to bear the cost. As some commenters have stated, some farmers will value the superior service over the possibility of a premium discount, which maintains the possibility of competition on both price and service, which can only benefit the farmer.

Comment: An approved insurance provider commented that, with respect to proposed § 400.719(a)(12), now redesignated § 400.718(c)(3), RMA has not been able to enforce this provision in the past two years. Agents and adjusters have reported from the field that the one approved insurance provider approved for the premium reduction plan is not providing the required training for agents and adjusters. This was required by Manual 14 and also is required by the 2005 SRA, addendum IV. The commenter states that this is harmful to the interests of farmers and potentially undermines the integrity of the crop insurance program. Furthermore, if these training requirements were adhered to it would add to the operating expenses of the one approved insurance provider and make it difficult for it to operate within the A&O expense reimbursement from RMA. The principal reason asserted by RMA in its declining the applications for the premium reduction plan of the other approved insurance providers was that they currently were not operating within the A&O expense reimbursement. The proposed premium reduction plan will not cure this deficiency.

Response: RMA disagrees that it has not enforced the provision of the proposed rule regarding the required training of agents and loss adjusters for the premium reduction plan, which is the same requirement as that contained in the SRA. As stated above, all approved insurance providers are required to provide information regarding the training provided to its loss adjusters and agents. In its monitoring of the approved insurance provider currently authorized to offer the premium reduction plan, RMA has received, reviewed and confirmed training activity logs, training curricula, and other documentation showing that the approved insurance provider is in compliance with SRA training requirements.

In addition, the approved insurance provider has demonstrated that it can operate at less than the A&O subsidy and still comply with all requirements of the SRA and approved procedures. Because all approved insurance providers are being held to the same standards, the integrity of the insurance program is maintained. If the commenter has evidence of any particular instance where the approved insurance provider was not in compliance with the training or any other requirement of the SRA, it should provide such evidence to RMA.

Comment: An approved insurance provider commented that, with respect to proposed § 400.719(a)(13), now redesignated § 400.718(c)(3) and (5), this cannot be achieved unless all approved insurance providers are approved to offer the premium reduction plan and agent commissions are not reduced to a level which removes the incentive for offering premium discount plans to the farmers.

Response: Section 400.719(a)(13), now redesignated § 400.718(c)(3) and (5), requires that participation in the premium reduction plan not result in a reduction in the total delivery system's ability to service all farmers. RMA agrees that the provision as drafted would appear to judge each individual approved insurance provider by the ability of all other approved insurance providers to deliver the Federal crop insurance program and this is not the intent. The reference to total delivery system was intended to refer to the whole delivery system of the approved insurance provider, such as managing general agents, agents, loss adjusters, any service providers, etc. Redesignated § 400.718(c)(3) and (5) are much clearer that the requirement applies to the performance of the approved insurance provider, not competitors.

Comment: An approved insurance provider asked what is meant by ''a reduction in the total delivery system's ability to serve all producers . . .'' in proposed § 400.719(a)(13), now redesignated § 400.718(c)(3) and (5). The commenter asked how FCIC determines whether there has been ''a reduction in the total delivery system's ability to serve all producers'' and how FCIC determines whether that reduction resulted from the premium reduction plan or from other causes. The commenter asked if an approved insurance provider's ability to implement the premium reduction plan is contingent upon the overall crop insurance program. The commenter asked if the approved insurance provider would otherwise qualify for the premium reduction plan, does FCIC have the ability to reject the approved insurance provider's plan based on the service provided to ''all producers.'' If so, it seems FCIC is penalizing the approved insurance provider for the

inadequacies of its competitors. Moreover, nothing in section 508(e)(3) suggests that the ability of an individual approved insurance provider to achieve program efficiencies is trumped by program-wide inefficiencies.

Response: As stated above, the language in proposed § 400.719(a)(13) was misleading. However, as explained above, it was never the intent of RMA to approve or disapprove an approved insurance provider from participating in the premium reduction plan or paying a premium discount based on the performance of its competitors. The only exception to that statement is that the composition of the approved insurance providers' books of business may be compared to determine whether the marketing plan is effective. Redesignated § 400.718(c)(3) and (5) have been clarified that RMA will be looking at the performance of the approved insurance provider and the various components of its delivery system.

Comment: An interested party commented recommended that any marketing plan that does not invest resources in the development of minority and other limited resource farmers be denied. The commenter stated that any marketing plan must pay particular attention to, and invest substantive resources in, closing this gap in eligibility for crop insurance. Similarly, the marketing plan must include comprehensive training of agents in specific methods needed to serve minority farmers, including partnerships with community based organizations serving minority farmers.

Response: RMA agrees that the marketing plan must be specifically designed to reach small, limited resource, women and minority farmers and must identify and use the appropriate media to reach these farmers, including the use of community based organizations. Further, as stated above, provisions have been added regarding the monitoring of these marketing plans and actions that may be taken if they are not effective.

However, RMA is unsure of what the commenter was referring to regarding comprehensive training of agents in specific methods needed to serve minority farmers. The SRA requires that approved insurance providers serve all farmers and the interim rule reiterates that the approved insurance provider must have the ability to effectively market to, and is operationally and financially capable and ready to serve, all farmers in the state. This would include small, limited resource, women and minority farmers.

Section 400.720

Comment: An approved insurance provider comments that, with respect to proposed § 400.720(a), now redesignated § 400.719(a), for good business planning purposes as well as maximizing stability in the crop insurance marketplace, approvals should continue beyond one year. As long as the rules are met, approved insurance providers should not have to reapply for annual approval of the premium reduction plan.

Response: RMA disagrees that eligibility should extend beyond one year. The SRA states that it is not effective for the reinsurance year until the annually filed Plan of Operations is approved by RMA. Therefore, it would be inappropriate to allow eligibility for a period longer than the effective period for the SRA. This could result in approved insurance providers being eligible to offer a premium discount even though they have not been approved for an SRA. In addition, since approval of the premium discount is based on the actual cost savings achieved for the reinsurance year, approval to pay a premium discount must be given each year. However, as stated above, the burden on the approved insurance provider to request eligibility to participate in the premium reduction plan has been significantly reduced. Therefore, no change has been made as a result of this comment.

Comment: An approved insurance provider comments that proposed § 400.720, now redesignated § 400.719, addresses the terms and conditions for the approved premium reduction plan. The commenter stated that the reporting requirements detailed in this rule will also significantly add to the operating expense to the approved insurance provider and defeats the intent of the premium reduction plan to reduce operating expenses. The cost alone of CPA certification as required in subsection (f), now redesignated § 400.720(a)(1), will be substantial.

Response: RMA recognizes that an approved insurance provider that chooses to participate in the premium reduction plan under the interim rule will incur certain costs when requesting approval to pay a premium discount. However, the incurrence of such costs will not occur until after the end of the reinsurance year and the approved insurance provider intends to request approval to pay a premium discount. This means that in crop years where there has been insufficient savings achieved, the approved insurance provider does not have to request approval to pay a premium discount and will not have to incur such costs.

Further, as stated above, RMA has sought to minimize such costs by eliminating the projected cost accounting up front, using the Expense Exhibits already provided with the Plan of Operations, and eliminating many of the other reporting requirements.

Comment: An approved insurance provider states that § 400.720(e), now redesignated § 400.715(h), changes the premium reduction plan from an offer that must be made to farmers with the right to reject the premium discount to a mandatory premium discount for all farmers. The wording throughout the proposed rule clearly makes the premium discount an offer to farmers which they may opt to decline. The commenter states that if the proposed wording of subsection (e) remains and the premium discounts are mandatory for all insureds of the approved insurance provider, then it follows that all approved insurance providers must be approved for the plan to avoid rate discrimination between the insureds based upon the approved insurance provider providing the insurance.

Response: RMA disagrees that all approved insurance providers must be determined eligible to participate in the premium reduction plan to avoid rate discrimination. First, as long as all farmers have access to the premium reduction plan, there is no discrimination unless an approved insurance provider refuses to insure an otherwise eligible farmer. To ensure universal access, approved insurance providers eligible to offer a premium reduction plan must execute a marketing plan that is designed to reach all farmers in the state, in addition to any promotional activity of its agents. In addition, all agents that represent at least one approved insurance provider that offers a premium reduction plan in the state must inform their customers of the names of all approved insurance providers that they represent that are also eligible to participate in the premium reduction plan in the state. Therefore, farmers can make an informed choice of approved insurance providers.

Second, the proposed rule makes it clear that all farmers that insure with the approved insurance provider authorized to provide a premium discount will receive the discount. This requirement remains in the interim rule. The approved insurance provider approved by RMA to pay a premium discount in a state must pay the premium discount to all its insureds in the state. Obviously it is the farmer's choice with respect to whether to accept

the premium discount and some may elect not to if it would adversely affect the payment under other farm programs. However, to allow approved insurance providers to select who receives a premium discount could lead to unfair discrimination.

In addition, the whole purpose of the premium reduction plan is to introduce price competition. Therefore, it is assumed that there will be differences between those approved insurance providers that participate in the premium reduction plan and those that do not and even among approved insurance providers that participate.

Comment: An approved insurance provider comments that, with respect to § 400.720(e), now redesignated § 400.715(h), it supports this provision because approved insurance providers who offer the premium reduction plan must be required to serve all farmers/all crops in the states in which they are licensed. This prevents ''cherry-picking'' and thus furthers Congressional intent. However, the commenter strongly feels that this sentence should include the word, ''applicable'' following the words ''receive the'' in the preceding sentence. As previously noted, for CAT policies, no premium discount would be applicable as the farmer pays no premium.

Response: RMA agrees with the comment regarding the requirement that premium discounts will automatically be provided to all of an approved insurance provider's insured in a state where it has been approved to pay a premium discount. RMA also agrees that there should be language stating that CAT policies or ineligible farmers will not receive the premium discount and has revised redesignated § 400.715(h) accordingly.

Comment: A few approved insurance providers and interested parties commented that proposed § 400.720(f), now redesignated § 400.720(a)(1), which requires certification by a CPA, should be signed by the person authorized to sign the SRA to emphasize the importance of the document.

Response: As stated above, under the alternative proposal adopted in the interim rule, only actual costs will be provided to determine whether there has been an efficiency and the amount of any premium discount and such costs will be based on the Expense Exhibits provided with the Plan of Operations, which is already signed by the person authorized to sign the SRA. Therefore, it is not necessary to have such person sign the audit and certification of these Expense Exhibits. Therefore, no change has been made as a result of this comment.

Comment: An interested party commented that proposed § 400.720(g), now redesignated § 400.719(d), would require that approved providers periodically report to the RMA on the average number of acres insured both before and after the premium reduction plan, the number of small, limited resource and minority farmers insured, and the number of agents selling and servicing policies by state. Such reporting would not identify efforts by approved providers to consolidate business among agents with only large, low risk customers. The commenter states that under the proposed rules, approved providers could effectively use agent business as a litmus test for choosing the states in which they do business and the agents who sell and service their policies.

Response: RMA agrees that the required report would not identify efforts by approved insurance providers to consolidate agents or select agents with only large, low risk customers, nor is the report intended to accomplish this. Neither the current SRA nor the proposed or interim rule precluded this conduct. To ensure that small, limited resource, women and minority farmers have access to the premium discount plan, approved insurance providers are required to target market through the appropriate media designed to reach these farmers and agents are required to inform all customers of the names of all approved insurance providers they write for that are eligible for the opportunity to offer a premium discount. This report, which has been substantially modified to remove the information collections that could be obtained through the summary of business or other RMA databases, is intended as a tool to assess the effectiveness of the marketing plan.

Further, as stated above, because of the real possibility that approved insurance providers would withdraw from states if they were required to participate in the premium reduction plan in all states in which they do business, RMA has elected to allow approved insurance providers to select the states in which they will participate in the premium reduction plan. This is because the risks associated with the possibility of no insurance coverage outweigh the risks associated with the possibility of not receiving a premium discount in the future.

Further, the selection criteria of the states is solely in the discretion of the approved insurance provider because only the approved insurance provider is in the position to determine where savings can be achieved without risking non-compliance with the requirements of the SRA or approved procedures.

Comment: An interested party commented that the approved insurance providers should be required to report the proposed impact of the premium reduction plan on the various types of products offered, by race, gender and ethnicity. In lieu of comprehensive data on race, gender and ethnicity, the approved insurance providers should further be required to report by scale and value of operation the number of farmers of various sizes enrolled in basic CAT coverage and other levels of more comprehensive coverage, and where reduced premiums were allocated.

Response: As stated above, much of the information collected in proposed § 400.720(g), now redesignated § 400.719(d), has been removed because such information is already collected under Appendix III to the SRA and maintained in RMA databases. It is only that information that is not currently collected, such as the number of small, women, and minority farmers making application and the resolution of any complaints that RMA will require approved insurance providers to report. The remaining information listed by the commenter is retained in RMA databases so there is no need for an additional information collection.

Comment: An approved insurance provider commented that the requirements in § 400.720(g), now redesignated § 400.719(d), requiring approved insurance providers to report the average number of acres insured under all policies by State before and after implementation of the premium reduction plan could create inaccuracies where a farmer has policies in different counties. The commenter stated that, at a minimum, the requirement should be restated to include ''the average number of acres on a crop, county, and entity basis insured under all policies by State before and after implementation of the premium reduction plan,'' and should also require premium growth by crop in each state. In addition, these semi-annual reports should be made available to the public.

Response: As stated above, this information collection has been removed from the interim rule because such information is already collected under Appendix III to the SRA. Therefore, there should not be a problem with inaccurate reporting. In addition, much of this information is available to the public in the aggregate in the summary of business published on RMA's website. However, to the extent that the semi-annual reports

required by the interim rule contain confidential business information, such information is protected from release to the public.

Comment: An approved insurance provider comments that, with respect to proposed § 400.720(g)(3), now redesignated § 400.719(d), it is very important that premium discounts are offered to all farmers. The required reporting, however, should not be of the numbers of small, limited resource, women and minority farmers that have made applications. In some regions of the country, it is likely there will be very few, if any, small/limited resource/women/minority farmers. It is also likely for newer crop approved insurance providers that their sales to such groups may not be statistically valid as they enter new states. Thus, the commenter recommends that each approved insurance provider offering the premium reduction plan only be required to report, and judged on, their outreach efforts as a whole in all states in which they are licensed.

Response: RMA agrees that the number of small, limited resource, women, and minority farmers is likely to vary dramatically according to geographical regions. Further, RMA recognizes that such figures when expressed as percentage of the total business in the state may present skewed figures, especially for new approved insurance providers. However, this information is still useful. Under the marketing plan, approved insurance providers are required to target these farmers. If RMA does not collect the information regarding their participation, RMA will have no way to judge whether the marketing plans are successful. Further, as stated above, any comparison between approved insurance providers would be based on the composition of their books of business, not just gross numbers.

RMA does not agree that approved insurance providers should only be judged on the outreach effort as a whole in all states. The whole purpose of the marketing plan is to increase participation of a traditionally underserved segment of farmers in each state where these farmers are located. However, because approved insurance providers can now select the states in which they participate in the premium reduction plan, the reporting must only be done for those states the approved insurance provider selects. Without such information, RMA would not be able to judge whether additional remedial measures are required by the approved insurance providers to reach these farmers. Therefore, no change has been made in response to this comment.

Comment: An approved insurance provider comments that, with respect to § 400.720(h), it supports this provision on the basis that an ''overstated'' premium discount is unfair to farmers. Any approved insurance provider applying for approval to offer the premium reduction plan should be required to accurately document their savings, allowing for the ''financial reserve plan'' as a back-up. Overall, the commenter states it see this as protection to farmers, since approved insurance providers might be tempted to use the premium reduction plan as a loss-leader to enter new markets if the savings are not substantiated and if they are not penalized for failing to achieve the savings they represented to the RMA would be made.

Response: As stated above, since RMA has adopted the alternative proposal in the interim rule, and premium discounts are based on actual cost savings, not projected, this provision is no longer required and has been removed from the interim rule.

Comment: An approved insurance provider commented that 400.720(h) says there is no penalty for not achieving the projected savings needed to cover the premium discount. The approved insurance provider is limited to no more than the ''actual cost savings'' in the future year with no consequence for the year of misrepresentation to the farmers. The commenter states that this creates an unfair competitive advantage to a provider willing to takes its chances on RMA not discovering their error with no financial impact at all to the approved insurance provider. There needs to be a provision added to portray the severity of this type of misrepresentation, *i.e.* reject any and all future premium discounts, charge the amount of the premium discount as a policy surcharge in the following year, require that amount as an additional expense in each of the next two reinsurance years, etc.

Response: As stated above, since RMA has adopted the alternative proposal in the interim rule, and premium discounts are based on actual cost savings, not projected, this provision is no longer required and has been removed from the interim rule. With respect to the sanctions for misrepresentation, as stated above, additional sanctions have been added that allow RMA to tailor the sanction to the offense and they include the ability to disqualify an agent or approved insurance provider from participating in the premium reduction plan.

Comment: An approved insurance provider comments that, with respect to § 400.720(i), now redesignated § 400.719(e), Congress and RMA has been very clear that no ''cherry-picking'' is allowed in the delivery of the crop insurance program. Exceptions for the premium reduction plan should not be made. The commenter specifically supports this provision on the basis that a premium reduction plan is and should be good for all farmers.

Response: RMA agrees with the comment. While RMA cannot prevent agents from competing for large attractive accounts, RMA can take action when insurance is denied to any eligible farmer, especially small, limited resource, women and minority farmers.

Comment: An approved insurance provider comments that, with respect to § 400.720(j), now redesignated § 400.719(f), FCIC and RMA should not have any liability for damages arising from these matters, but is concerned that this provision attempts to re-allocate liability for damages among private parties, which should be left to state law. For example, in the implementation of an approved premium reduction plan, an agent could make errors or misrepresentations for which the agent bears some or all of the liability to third parties injured thereby under applicable state law. Moreover, this provision could be interpreted to create a new, federal cause of action for these matters, which the commenter does not believe is or should be the RMA's intent. The commenter stated that state law should govern both the existence of a cause of action for these matters, as well as the allocation of liability among private third parties. Accordingly, the commenter proposes the provision be changed to read ''In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.''

Response: RMA agrees and has revised the provision accordingly.

Comment: An approved insurance provider commented that § 400.720(k) seems to suggest this program will only be ''periodically reviewed'' by RMA. It is imperative to the integrity of this program that a formal and regular review of an approved audit procedure be in place with necessary staff to analyze the results annually. This element of control and accountability is essential to the fairness to all farmers and to all approved providers.

Response: RMA agrees that monitoring is important. Under the interim rule, monitoring will occur under the SRA and under the premium reduction plan. However, since

adoption of the alternative proposal, many of the monitoring activities stated in proposed § 400.720(k) have been rendered moot and removed from the interim rule.

Comment: An approved insurance provider comments that, with respect to § 400.720(m) and (n), now redesignated §§ 400.719(j) and 400.721(a), RMA should be able to withdraw approval or require modification of the premium reduction plan if any of the criteria in (m) exists. However, the commenter states that before it withdraws approval, RMA should give the approved insurance provider a thirty day cure period. The approved insurance provider may not have been aware of the problem, and this gives it a reasonable period within which to fix it. Additionally, the commenter requests that an approved insurance provider whose premium reduction plan has been withdrawn or required to be modified should have the right to request reconsideration, as § 400.719(c)(2) of the proposed rule would allow if a revised Plan of Operations is disapproved.

Response: Section 400.719(j) provides RMA with additional options so that sanctions can be tailored to the offense. One of the options is to require remedial measures to eliminate the problem. In addition, RMA has added a reconsideration process if any of the sanctions are applied, including denial of the payment of a premium discount or withdrawal of eligibility for the opportunity to offer a premium discount. RMA has also added an appeals process to the Board of Contract Appeals to avoid confusion regarding the proper forum to handle appeals. The Board of Contract Appeals was determined to be the proper forum because the premium reduction plan has been incorporated by reference into the SRA, monitoring will occur under the SRA, sanctions may be imposed under the SRA, and the documents reviewed are provided under the SRA.

Comment: An approved insurance provider proposes that, with respect to § 400.720 RMA add a new subsection (o) stating as follows:

''(o)(1) Before withdrawing or modifying its approval of a premium reduction plan, RMA will notify the provider in writing of the contemplated withdrawal or modification of approval and the reason therefore, and allow the provider at least thirty days to cure. If the provider does not cure within such period to the RMA's reasonable satisfaction, the withdrawal or modification shall be effective after the expiration of such thirty day period and as of the date specified in the notice.

(2) If approval of a premium reduction plan is withdrawn or modified, the approved insurance provider may request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days after the effective date of such withdrawal or modification and such request must provide a detailed statement of the basis for the reconsideration.''

Response: As stated above, RMA has added provisions that allow RMA to require remedial measures instead of withdrawal of eligibility for the opportunity to offer a premium discount. Such remedial measure could include a cure period. In addition, reconsideration and appeals provisions have also been added.

Comment: An interested party recommended that a process should be established to monitor compliance, planned outcomes and results of marketing plans.

Response: RMA agrees that it have a process in place that monitors approved insurance provider performance with respect to the marketing plans. The semi-annual reports will be used. In addition, RMA can compare the compositions of the books of business of the approved insurance providers to determine whether there are any anomalies that suggest the marketing plan is not effective. RMA has also created a mechanism whereby farmers can file complaints directly to RMA for investigation and resolution.

Following are a summary of the current procedures and the adopted changes in the interim rule.

1. Fundamental Principles. Under the existing procedures, approved insurance providers could name the states and crops for which the premium reduction plan would be applicable. As stated more fully above, after careful consideration of all the comments, RMA has elected to retain the provisions regarding the selection of states. In the interim rule, approved insurance providers will be able to select those states in which it wants the opportunity to offer a premium discount. RMA retained this provision because of the concerns raised by commenters that approved insurance providers would pull out of unprofitable states, leaving those farmers without access to crop insurance. RMA balanced the interests of farmers potentially receiving a premium discount with the possibility that farmers could be left with no coverage and determined that it was more important to ensure that farmers have access to crop insurance than that they potentially receive a premium discount.

However, to avoid any unfair discrimination all farmers within that state must be treated the same. Therefore, RMA has removed the provisions allowing approved insurance providers to select specific crops. Allowing such a practice could lead to unfair discrimination against farmers of certain crops.

Under the existing procedures, the same premium discount was provided in all states. The interim rule changes this requirement to allow approved insurance providers to vary the discount by state because the A&O costs of approved insurance providers can vary significantly by state. It is safer for the crop insurance program for approved insurance providers to cut costs in those states where it would not affect their ability to deliver the crop insurance program than to require approved insurance providers make the same cuts in all states.

However, as stated more fully above, the premium reduction plan has been redesigned so that RMA approves the amount of premium discount that can be paid in any state. Further, it allows for true competition because the market will determine the appropriate amount of premium discounts. In addition, RMA is now requiring that not all efficiencies can come from reductions in agents' compensation.

In the interim rule, RMA still had to address the concerns expressed by commenters that the premium reduction plan would require complex cost accounting rules and there would be cost allocation issues. There was also the concern that RMA would not have the adequate skilled staff to be able to oversee and administer each of the potentially different premium reduction plans that could be submitted by the approved insurance providers.

As discussed more fully above, adoption of the alternative proposal mitigates or eliminates most of these problems. Under the alternative proposal, premium discounts are based on actual cost savings attained for the reinsurance year. Further, RMA has broken the A&O costs into three categories and has determined simple cost allocation rules where necessary. Approved insurance providers will be provided with procedures that set forth a formula that will be used to determine efficiencies and the amount of premium discount that can be paid in a state. These procedures will be published on RMA's website at *www.rma.usda.gov* not later than 5 days after the publication of the interim rule in the **Federal Register**.

With respect to when payments can be made, under the existing procedures, premium discounts are based on projected cost savings and the approved insurance provider may advertise and guarantee those savings to the farmer

before they are realized. This means that farmers see an immediate reduction in the amount they owe on their premium bill for the crop year.

Under the interim rule, premium discounts will be based on the actual costs realized in a reinsurance year so payment of a premium discount cannot be made until after all such costs are accounted for, reported to RMA, and RMA approves the amount of premium discount that can be paid in any state. This means the farmer may not see the benefit of a premium discount until well after the end of the crop year and there is no guarantee that any premium discount will be paid for the year. While this may preclude farmers from receiving the immediate benefits, it allows the premium reduction plan to operate in a manner that reduces the possibility that an approved insurance provider may not be able to attain its projected savings, that such cost saving measures may affect the financial stability of the approved insurance provider and the delivery system, and reduces the burden on approved insurance providers and RMA to administer the premium reduction plan.

2. Revisions of Definitions. Most of the definitions from the current procedures have been included in this interim rule, although some have been modified to conform to the SRA. The definitions of ''administrative and operating (A&O) costs'' and ''administrative and operating (A&O) subsidy'' have been revised to eliminate the costs and loss adjustment expense subsidies related to the sale and service of catastrophic risk protection (CAT) policies. This change was made because no premium is owed under a CAT policy. Therefore, the premium discount would not be applicable. For the ease of cost accounting, and because there is little variation in the sale or service of CAT policies because options are so limited, these definitions create an assumption that the loss adjustment expense subsidy paid by RMA is equal to the amount of costs associated with the sale and service of CAT policies.

RMA has also revised the definition of ''compensation'' to clarify that compensation includes any benefits, including those from third parties, that are guaranteed, even though the amount may differ year to year, regardless of the existence of an underwriting gain for the approved insurance provider, and to clarify when profit sharing arrangements will not be included as compensation. The definition of ''efficiency'' is revised to clarify that cost savings must be attributable to operational efficiencies or a reduction in expenses but such savings cannot solely result from reductions in compensation.

A definition of ''approved procedures'' is added for clarification. Definitions of ''eligible crop insurance contract'' and ''eligible producer'' have been added consistent with such definitions in the Standard Reinsurance Agreement. A definition of ''profit sharing'' is added to clarify the difference between guaranteed benefits, which are considered compensation, and contingent benefits based on underwriting gains. A definition of ''reduction in service'' is added to clarify that approved insurance providers are only required to meet the requirements for service contained in the SRA, procedures, and other directives of RMA. Therefore, a reduction in service occurs when there has been a failure to comply with one of the requirements. RMA acknowledges that there may be agents who have been providing many more services than those required but RMA cannot require that such service be maintained. It can only enforce the requirements it has set out.

A definition of ''underwriting gain'' is added to clarify that such gains include the net gain payment made to the approved insurance provider on its whole book of business under the SRA, less any costs it pays from such gains, including any costs related to the delivery of the program in excess of the amount of administrative and operating subsidy received from RMA. The definition of ''unfair discrimination'' has been modified to clarify that approved providers cannot exclude farmers based on the loss history or the size of the policy.

3. Timing of the Submission of Revised Plans of Operations. The current procedures require revised Plans of Operations be filed not later than 150 days prior to the first sales closing date where the premium discount will be applicable. In the interim rule, for the 2006 reinsurance year, revised Plans of Operations must be received by RMA not later than 15 days after publication of the interim rule to allow RMA time to consider such revised Plans of Operations before the fall sales closing dates. For subsequent reinsurance years, all revised Plans of Operations must be received by RMA with the Plan of Operations for the reinsurance year. RMA has elected to have a single submission window each reinsurance year to ensure that all approved insurance providers are playing on a level field, as requested by the commenters. However, RMA has added provisions that would allow new approved insurance providers to request an opportunity to offer a premium discount in their request for approval of an SRA.

Under the existing procedures, approved insurance providers were required to implement the premium reduction plan once it was approved by RMA. This provision has been removed. Approved insurance providers have the ability to determine whether it can effectively implement cost cutting measures necessary to achieve the requisite efficiency. The interim rule now reflects that if the approved insurance providers requests approval to pay a premium discount, it must pay the premium discount if it is approved by RMA. Since approved insurance providers have the option of requesting approval to pay a premium discount, the existing procedures allowing the approved insurance provider 15 days to withdraw its premium reduction plan were also not included in the interim rule.

4. Confidentiality Requirements. The existing procedures contained confidentiality requirements. However, since such procedures do nothing more than restate the law, RMA has elected to remove them from the interim rule. This will allow flexibility should such laws be revised.

5. Contents of Revised Plans of Operations. The current procedures require five copies and both a hard copy and electronic version of the revised Plan of Operations and other documentation. The interim rule has been revised to remove this requirement because there is no longer a need to submit a revised Plan of Operations. The current Expense Exhibits submitted with the Plan of Operations will be used, along with any estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits. The current procedures require the approved insurance provider to provide the name of the person responsible for the administration of the premium reduction plan, the reinsurance year the plan will be in effect; a statement of the amount of the premium discount to be offered to farmers, how it is calculated, and reported to RMA; a list of any and all terms and conditions that affect its availability; and the projected total dollar amount of the premium discount to be provided to the farmers. Except for providing the name of the person who will be responsible for the premium reduction plan, all these other requirements have been removed from the interim rule. Such requirements are no longer necessary because premium discounts are now based on actual costs, not projected costs. Further, the availability or amount of the premium

discount is no longer known or guaranteed. The interim rule does require that approved insurance providers provide a report of the actual premium discount payments made for the previous year but such report must be provided not later than 15 days after the payment of the premium discounts.

The existing procedures also require the approved insurance provider to list the proposed crops and states where the efficiency is being gained and the estimated number of farmers. As stated above, the requirement to list the states has been retained but the requirement to list the crop has been removed from the interim rule because this provision was rendered moot by the requirement that premium discounts be paid for all crops in those states listed by the approved insurance provider.

The existing procedures also require that approved insurance providers state how they intend to deliver the premium reduction plan and to identify the cost saving measures that will be used to attain the projected efficiency. These requirements were removed from the interim rule because RMA no longer has to determine up front whether it is realistic for approved insurance providers to meet their projected efficiencies.

The requirements in the existing procedures stating how projected efficiencies are calculated, requiring detailed accounting statements, and the other accounting matters have been removed from the interim rule. Now that the premium discount will be based on actual cost savings instead of projected cost savings, such information is no longer required to be provided up front. Cost accounting information necessary for the approval of the premium discount that can be offered in a state is already contained in the existing Expense Exhibits to the SRA. Further, RMA will provide a formula for calculating the premium discount to be used in the approval process through procedures.

The requirement that counsel from the approved insurance provider certify that the manner in which the premium reduction plan will be delivered is in accordance with state law has been removed from the interim rule. It is the responsibility of the approved insurance provider to ensure that it delivers the crop insurance program in compliance with the requirements of the SRA. Failure to comply with any requirements can subject the approved insurance provider to sanctions under the SRA. Therefore, this requirement was no longer necessary.

The existing procedures also required that approved insurance providers provide an analysis of whether the premium reduction plan is unfairly discriminatory or could be perceived as such. This provision has been removed from the interim rule and instead, approved insurance providers are required to provide marketing plan for all farmers, including small, minority, women and limited resource farmers to address concerns that such farmers will not receive access to premium discounts.

RMA has added provisions that limit the marketing that can be done regarding premium discounts because they are no longer guaranteed up front. After the approved insurance providers have been determined to be eligible for the opportunity to offer a premium discount, approved insurance providers and their contractors and employees will only be able to advertise that they have been determined to be eligible and state the premium discounts that have been paid in previous reinsurance years. Disclaimers must also be prominently displayed that state that past premium discounts to not guarantee that a future discount will be paid or its amount. RMA is also enlisting the states to assist it in monitoring the marketing conduct of the approved insurance providers and their contractors and employees because states currently monitor such activities so they already have the infrastructure in place.

RMA has also added a requirement to the interim rule that approved insurance providers must provide a certification that their cost saving measures will not result in a reduction in service as defined in the interim rule. This is to reinforce the importance of this requirement.

6. New approved insurance providers. The existing procedures allow certain costs associated with new approved insurance providers and with respect to expansions by existing approved insurance providers be included in the A&O costs for the purposes of determining the efficiency. RMA has elected to remove the provisions regarding existing approved insurance providers because it is impractical to track those costs associated with normal expansion and those attributable to the premium reduction plan. Further, the Act does not make any distinction between the types of costs against which to measure the efficiencies. However, it is only the new entrants into the crop insurance business that have the exceptional costs associated with such entrance. Existing approved insurance providers may incur some additional costs but not nearly to the extent that new entrants would. Further, some of these costs associated with expansion may be captured if the approved insurance provider can establish a higher expected premium volume for the year. RMA has clarified that new entrants are limited to those that have not participated in the program previously or are not affiliated with a managing general agent, another approved insurance provider, or other such entity that already has the infrastructure necessary to deliver crop insurance. The existing procedures have also been revised to no longer allow the new entrant to exclude the startup costs from its expenses reported under the premium reduction plan. In the interim rule, such startup costs must be included as expenses but the approved insurance provider will be permitted to spread such costs equally for up to three reinsurance years.

7. RMA Review Process. The current procedures require RMA to evaluate the completeness of a revised Plan of Operations and notify the approved insurance provider within 30 days. This provision has been removed because of the administrative burden it places on RMA to review the revised Plan of Operations twice and provide two separate responses. In the interim rule, for the 2006 reinsurance year, RMA will notify the approved insurance provider not later than 30 days after the approved insurance provider requests the eligibility to offer a premium discount, whether it is eligible for the opportunity to offer a premium discount under the premium reduction plan. For all subsequent reinsurance years, current procedures require RMA to provide a response to the approved insurance provider regarding its eligibility for an opportunity to offer a premium discount not later than 30 days prior to the first sales closing date. This provision has been revised to require that the request be made with the Plan of Operations. Since approved insurance providers will no longer be able to market premium discounts like they did under the existing procedures, the additional lead time is not as critical.

RMA has also added provisions setting forth the criteria under which RMA will determine an approved insurance provider eligible for the opportunity to participate in the premium reduction plan. A new criteria is that the marketing plan be designed to reach small farmers, limited resource farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority farmers. Disclaimers have also been added to the interim rule to inform participants in the crop insurance program that RMA determination of eligibility does not

guarantee that it will approve a premium discount.

8. Standards for Approval. The current procedures require that the premium reduction plan not result in the reduction of service to farmers or be harmful to the interest of farmers, not place a financial or operational hardship on the approved insurance provider or undermine the integrity of the crop insurance program. Further, such procedures require the approved insurance provider have the financial and operational capacity and expertise to deliver the crop insurance program after implementation of the premium reduction plan, there be adequate internal controls to monitor its compliance with the provisions of the interim rule, and the premium reduction plan meet all other requirements of the Act and the SRA. These requirements have been retained in this interim rule but moved to the previous section because, in the interim rule, RMA has separated the process for determining eligibility for an opportunity to offer a premium discount under the premium reduction plan from the approval of the amount of premium discount.

To be approved for a premium discount, the approved insurance provider must provide an audit of its Expense Exhibits to the SRA and an estimate of additional A&O costs for the reinsurance year not included in such Exhibits, certified by an independent public accountant with experience in insurance accounting, a detailed description of the profit sharing arrangements, the amount and percentage of premium discount in each state determined by the approved insurance provider, and the amount of premium discount the approved insurance provider intends to pay. RMA has also added provisions requiring that the cost of such audit be included in the A&O costs. The criteria for approval of the amount of premium discount includes: (1) The Expense Exhibits to the SRA must show the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year; (2) a determination of whether the approved insurance provider had an efficiency and the amount of premium discount that can be paid in any state; (3) whether the amount of premium discount determined by the approved insurance provider exceeds the amount determined by RMA; and (4) whether the approved insurance provider has complied with all requirements of the rule.

9. Disapproval. RMA has revised the existing procedures and combined them with the review and approval process as stated above.

10. Requirements After Approval of a Premium Reduction Plan. The current procedures specify that all procedural issues, problems, etc. will be addressed by the approved insurance provider; premium discounts must be implemented in accordance with the premium reduction plan; the approved insurance provider is liable for all mistakes, errors, etc. The current procedures also required the approved insurance provider to assist RMA in any reviews conducted to determine whether the efficiency is generated and there is compliance with the premium reduction plan and to make any changes required by RMA. These provisions have been basically retained in the interim rule, although modified slightly to reflect that premium discounts are based on actual cost savings and they now apply after RMA has determined the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan.

RMA has revised the procedures regarding reporting to ensure the information provided is adequate to review and assess the impact on program participants, including small farmers, limited resource farmers, women and minority farmers and on the crop insurance program. RMA will also utilize other information it obtains to monitor compliance with the rule. RMA has also revised the procedures to clarify that farmers will automatically receive the premium discount in those states listed by the approved insurance provider where it is approved to pay premium discounts. RMA has also added provisions making it clear that eligibility for the opportunity to offer a premium discount under the premium reduction plan is only for one reinsurance year and approved insurance providers must reapply for subsequent years.

Additionally, RMA has added provisions requiring agents to notify all existing policyholders or potential policyholders of all the approved insurance providers the agent represents that are eligible for the opportunity to offer a premium discount. As stated above, this is to help ensure that all farmers in states where premium discounts may be available to have access to such discounts. Further, RMA added provisions specifying that it will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small farmers, limited resource farmers, women and minority farmers to ensure that no unfair discrimination takes place and that if it is discovered, RMA may take such action as authorized in the rule.

The existing procedure requiring the approved insurance provider to offer a premium reduction plan has been removed and new provisions added giving the approved insurance provider the option of whether to request approval to pay a premium discount in any reinsurance year. However, once approved, the premium discount must be paid in accordance with the rule. The existing procedures regarding the withdrawal of approval have been retained but additional remedies, such as denial of all or part of a premium discount and remedial actions have been added.

11. New Provisions. Unlike the procedures, RMA has added provisions that expressly state the limitations and prohibitions on the premium reduction plan program in order to simplify and clarify the program. Such limitations include a cap on the maximum amount of premium discount RMA may authorize for at least the first two reinsurance years a premium discount is paid, and thereafter unless modified or eliminated by RMA, to allow RMA to evaluate the effect such plan may have on the crop insurance program and ensure that approved insurance providers are not leaving themselves financially vulnerable by cutting their costs too much. This means the cap could be in effect for at least 4 reinsurance years depending on when the premium discount is paid.

RMA has also created a new section that contains provisions regarding the reconsideration of actions taken by RMA and requires appeal of the decision in such reconsideration be made to the Board of Contract Appeals.

A new section has also been added regarding consumer complaints. These provisions provide a mechanism for reporting violations of the interim rule.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. A case for good cause is needed to make a rule effective less than 30 days after publication. Good cause exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this interim rule, it would be contrary to the public interest to delay implementation of the procedures under which approved insurance providers may request to participate in the premium reduction plan under section 508(e)(3) of the Act and seek approval to pay premium discounts if they have attained the requisite efficiency. The public interest is served by this interim rule

because: (1) It will greatly reduce the complexity and the burden on approved insurance providers and RMA to administer the premium reduction plan; (2) it will replace administrative procedures that have been determined by FCIC's Board of Directors to be inadequate because they fail to take into consideration the different business operations of the approved insurance providers; (3) to be given its full effect, the provisions of the interim rule must be implemented as soon as possible because the 2006 reinsurance year began on July 1, 2005; (4) time is needed for approved insurance providers to submit requests to participate in the premium reduction plan, RMA to determine their eligibility to participate, and for agents to be trained ahead of key fall sales closing dates; and (5) approved insurance providers, farmers, and the public will not be disadvantaged by the immediate implementation of the rule.

If RMA is required to delay the implementation of this rule 30 days after the date it is published, there will be inconsistency in the administration of the premium reduction plan for the 2006 reinsurance year because fall planted crops may have to be administered under the existing procedures while spring planted crops would be administered under the interim rule. This will cause confusion in the marketplace and the potential for certain farmers to miss the opportunity to receive a premium discount.

For the reasons stated above, good cause exists to implement this interim rule less than 30 days after the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance, Disaster Assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

Interim Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400 subpart V, applicable for the 2006 and succeeding reinsurance years, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p), 1508(e)(3).

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

■ 2. Revise the heading for subpart V to read as set forth above.

■ 3. Amend § 400.700 by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 400.700 Basis, purpose, and applicability.

* * * * *

(b) The purpose of the premium reduction plan is to foster competition in the crop insurance program, thereby providing producers with an opportunity to receive a premium discount, as authorized in section 508(e)(3) of the Act. RMA has sought to accomplish this purpose, while still maintaining the financial stability of the delivery system and the integrity of the crop insurance program, by implementing a premium reduction plan where approved insurance providers participate in the premium reduction plan by requesting the opportunity to offer a premium discount and later requesting approval from RMA to pay a premium discount if the insurance provider has achieved an efficiency based on the actual savings it has attained through the reinsurance year.

(1) Since the payment of any premium discount is determined based on actual reported cost information for the reinsurance year, and must be approved by RMA, the disclosure to policyholders of the amount of the premium discount and the payment of the premium discount will not occur until after the close of any given reinsurance year.

(2) This premium reduction plan substantially limits the burden on approved insurance providers and RMA and provides for flexibility for approved insurance providers to choose the States in which they will offer premium discounts and vary the amount of premium discount between States.

(3) Under the premium reduction plan, the payment and amount of premium discounts cannot be guaranteed, or identified as to amount or certainty of payment, in advance of the sale of an eligible crop insurance contract. However, producers will have the potential to receive monetary assistance in defraying the costs of their future premium.

§ 400.701 [Amended]

■ 4. Amend § 400.701 by revising the definition of ''Administrative and operating (A&O) subsidy'' and by adding the definitions of ''Administrative and operating (A&O) costs,'' ''Agent,'' ''Approved procedures,'' ''Compensation,'' ''Efficiency,'' ''Eligible crop insurance contract,'' ''Eligible producer,'' ''Managing General Agent (MGA),'' ''Plan of Operations,'' ''Premium discount,'' ''Profit sharing arrangement,'' ''Reduction in service,'' ''Standard Reinsurance Agreement (SRA),'' ''Third Party Administrator (TPA),'' ''Underwriting gain,'' and ''Unfair discrimination'' in alphabetical order to read as follows:

§ 400.701 Definitions.

* * * * *

Administrative and Operating (A&O) costs. The costs of the approved insurance provider, and any MGA and TPA, which are directly related to the delivery, loss adjustment and administration of the Federal crop insurance program. Costs associated with the sale or service of catastrophic risk protection (CAT) eligible crop insurance contracts in an amount equal to the loss adjustment expense subsidy for CAT eligible crop insurance contracts, ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer, and payments for the purchase of reinsurance and related credits are not considered as A&O costs.

Administrative and Operating (A&O) subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for CAT eligible crop insurance contracts, and any ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer are not considered as A&O subsidy.

Agent. An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is employed by, or under contract with, the approved insurance provider, or its designee, to sell and service such eligible crop insurance contracts.

* * * * *

Approved procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board. For purposes of §§ 400.714 through 400.722 only,

approved procedures include all provisions of the SRA.

* * * * *

Compensation. The total amount of any guaranteed salary or payment, commission, or anything that has a quantifiable value or benefit that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider or its contractor either directly or indirectly through a third party. Payments conditioned upon something other than the underwriting gains of the approved insurance provider are considered as compensation, such as bonuses or other conditional payments or commission based upon whether an agent timely turns in applications, production reports or acreage reports, etc. A profit sharing arrangement will be considered compensation unless and only to the extent that:

(1) Such profit sharing arrangement contains a provision that would require a pro rata reduction in the amount or percentage of profit contained in such arrangement if the total amount of underwriting gain paid by FCIC for the applicable reinsurance year is not sufficient to cover the amount or percentage of profit; or

(2) At least one of the required triggers for the payment under the profit sharing arrangement is that the approved insurance provider receives from FCIC an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

* * * * *

Efficiency. Monetary savings realized when the approved insurance provider's A&O costs are less than the amount of the A&O subsidy paid by FCIC. If the approved insurance provider is reducing agent compensation as a means to achieve an efficiency, not all of the efficiency can come from such reduction in agent compensation. Efficiency does not include any actual or projected underwriting gain earned from the SRA, private reinsurance revenues or expenses, or any investment returns on the approved insurance provider's reserves.

Eligible crop insurance contract. An insurance contract for an agricultural commodity authorized by the Act and approved by FCIC, with terms and conditions in effect as of the applicable contract change date, which is sold and serviced consistent with the Act, FCIC regulations, and approved procedures having a sales closing date within the reinsurance year, and with an eligible producer.

Eligible producer. A person who has an insurable interest in an agricultural commodity, who has not been determined ineligible to participate in the Federal crop insurance program, and who possesses a United States issued social security number (SSN), employer identification number (EIN), or such other identification as required by RMA.

* * * * *

Managing General Agent (MGA). An entity that meets the definition of managing general agent under the laws of the State in which such entity is incorporated and in every other State in which it operates, or in the absence of such State law or regulation, meets the definition of a managing general agent or agency in the National Association of Insurance Commissioners Managing General Agents Act, or successor Act.

* * * * *

Plan of Operations. The documents and information the approved insurance provider must submit in accordance with section IV.F.2. and Appendix II of the SRA and applicable approved procedures.

Premium discount. A payment made by the approved insurance provider to the policyholder to help defray the cost of premium, in an amount equal to the dollar amount or corresponding percentage of net book premium approved by RMA, as authorized by section 508(e)(3) of the Act.

Profit sharing arrangement. An arrangement to make a payment to an employee, agent, loss adjuster or other contractor conditioned upon whether the approved insurance provider receives an underwriting gain on the crop insurance business. Payments made to commercial reinsurers or ceding commissions paid to the approved insurance provider for the reinsurance year for the crop insurance book of business are not considered as profit sharing arrangements for the purposes of determining A&O costs or A&O subsidy.

Reduction in service. When the approved insurance provider, agent and loss adjuster, or any other contractor or employee of the approved insurance provider that assists in or provides any service for a Federally reinsured eligible crop insurance contract, sells, services or administers such eligible crop insurance contracts at a level of service less than that required under all applicable regulations and approved procedures. A violation of a provision in an approved procedure will be considered to be a reduction in service.

* * * * *

Standard Reinsurance Agreement (SRA). The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. All references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement, unless otherwise stated in such reinsurance agreement.

Third Party Administrator (TPA). A person or organization that processes claims or performs other administrative services and holds licenses, as applicable, in States in which services are provided with respect to the Federal crop insurance business in accordance with a service contract or an affiliate or any other type of relationship.

* * * * *

Underwriting gain. For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, including but not limited to payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, service, loss adjustment and administration of the Federal crop insurance program.

Unfair discrimination. An approved insurance provider's implementation of the premium reduction plan will be considered unfairly discriminatory to a producer if the availability of eligible crop insurance contracts sold under the premium reduction plan, or the percentage of net book premium upon which the premium discount is paid, is based on the loss history of the producer, the amount of premium earned under the eligible crop insurance contract, the producer's size of the operation or number of acres to be insured, or precludes in any manner producers from participating in the premium reduction plan in a State where an approved insurance provider is eligible for the opportunity to offer a premium reduction plan.

* * * * *

■ 5. Add a new § 400.714 to read as follows:

§ 400.714 Requests for the opportunity to offer a premium discount.

(a) To participate in the premium reduction plan, approved insurance providers must make a request to RMA for the opportunity to offer a premium discount for the reinsurance year in accordance with § 400.716.

(b) If RMA determines that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan for the reinsurance year, the approved insurance provider will only be allowed to pay a premium discount if:

(1) The approved insurance provider has submitted the required information applicable for that reinsurance year in accordance with § 400.720;

(2) The approved insurance provider has demonstrated to RMA that it has operated sufficiently below its A & O subsidy to support the payment of such discount; and

(3) RMA has approved the dollar amount, and the corresponding percentage of net book premium, for the premium discount.

(c) For the 2006 reinsurance year:

(1) For an approved insurance provider with an approved SRA for the 2005 reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than August 4, 2005; and

(2) For an approved insurance provider that did not have an approved SRA for the 2005 reinsurance year and did not request such agreement until after the deadline contained in paragraph (c)(1) of this section, requests for the opportunity to offer a premium discount must be provided with the application for approval of a SRA.

(d) For all subsequent reinsurance years:

(1) For an approved insurance provider with an approved SRA for the previous reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than April 1 before the reinsurance year, or the date RMA otherwise determines the Plan of Operations is due; and

(2) For an approved insurance provider that did not have an approved SRA for the previous reinsurance year and did not request such agreement until after the deadline contained in paragraph (d)(1) of this section, requests for the opportunity to offer a premium discount under the premium reduction plan must be provided with the application for approval of a SRA.

(e) Any request for the opportunity to offer a premium discount under the premium reduction plan that is not submitted by the applicable deadlines contained in paragraphs (c) and (d) will not be considered until the next reinsurance year.

(f) The request for the opportunity to offer a premium discount under the premium reduction plan must be sent to the Director, Reinsurance Services Division (or designee).

■ 6. Add a new § 400.715.

§ 400.715 Limitations and prohibitions.

(a) For the first two reinsurance years that RMA approves the payment of a premium discount, the approved insurance provider may not pay a premium discount under the premium reduction plan to a producer greater than 4.0 percent of the net book premium for the eligible crop insurance contract. For subsequent reinsurance years, the 4.0 percent of the net book premium for the eligible crop insurance contract will remain the maximum amount of premium discount authorized to be approved by RMA unless otherwise stated by RMA.

(b) All premium discounts must be based on an actual accounting of efficiencies achieved by the approved insurance provider for the reinsurance year and may not be distributed to policyholders until the payment and the amount of such discounts have been approved by RMA in writing in accordance with § 400.720.

(c) The approved insurance provider may not impose any term or condition upon the distribution or amount of any premium discount (such as conditioning the premium discount based upon the renewal of the eligible crop insurance contract with the approved insurance provider or not having a loss for the crop year), except those included in §§ 400.714 through 400.722.

(d) Premium discounts under the premium reduction plan are not available for:

(1) Eligible crop insurance contracts at CAT level of coverage; and

(2) Ineligible producers.

(e) No approved insurance provider or its representatives, agents, employees or contractors may advertise or otherwise communicate to any producer the availability, potential availability, or existence of:

(1) The opportunity to offer a premium discount under the premium reduction plan until the approved insurance provider receives written notice from RMA that it is eligible for the opportunity to offer a premium discount;

(2) A specific amount of premium discount prior to such amount being approved in writing by RMA in accordance with § 400.720; and

(3) Past or projected ability of the approved insurance provider to operate at less than the approved insurance provider's A&O subsidy.

(f) After RMA has determined that the approved insurance provider is eligible for the opportunity to offer a premium discount in a State, the approved insurance provider and its representatives, agents, employees or contractors may advertise and communicate to producers that there is an opportunity for the approved insurance provider to offer a premium discount in that State and:

(1) If they advertise or otherwise communicate that there is an opportunity to offer a premium discount in that State, such advertisements or other communications:

(i) Can only state the dollar amounts or corresponding percentage of net book premium of premium discount actually paid to producers in the State for each reinsurance year for which the approved insurance provider paid a premium discount; and

(ii) Must contain a prominently displayed disclaimer that:

(A) States ''The past payments of premium discounts are not a guarantee that future payments will be made or an indication of the amount of future premium discounts''; or

(B) States a similar statement that must be approved in writing by RMA; and

(2) RMA may impose a sanction authorized in § 400.719(j) if:

(i) RMA determines that the approved insurance provider or its representative, agent, employee or contractor is not in compliance with the provisions of this section; or

(ii) Any State regulatory authority determines that an approved insurance provider or its representatives, agents, employees or contractors has violated any State law regarding the advertising, marketing or solicitation of customers with respect to a premium discount under the premium reduction plan.

(g) The approved insurance provider shall not distribute any premium discount payment:

(1) Until the dollar amount, and corresponding percentage of net book premium, for the premium discount have been approved by RMA in writing (For example, RMA may approve a dollar amount of premium discount in a State of $500,000, which corresponds to a percentage of premium discount of 3% of the net book premium for the State); and

(2) In an amount that is greater than the dollar amount, and corresponding percentage of net book premium, for the premium discount approved by RMA.

(h) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount in a State:

(1) All producers insured by the approved insurance provider in that State for the corresponding reinsurance year will automatically receive that percentage of net book premium of premium discount (For example, if an approved insurance provider is approved to pay a percentage of premium discount of 3% of the net book premium for efficiencies attained during the 2006 reinsurance year in a State, all producers insured with that approved insurance provider during the 2006 reinsurance year in that State will receive a premium discount that is 3% of the net book premium for their eligible crop insurance contract); and

(2) That same RMA approved premium discount percentage of net book premium must be paid for all crops, coverage levels except the CAT coverage level, and plans of insurance written by the approved insurance provider in that State.

(i) The approved insurance provider must be in compliance with all requirements of the approved procedures to be able to pay a premium discount.

■ 7. Add a new § 400.716.

§ 400.716 Contents of the request for the opportunity to offer a premium discount.

Each request for the opportunity to offer a premium discount under the premium reduction plan must include all of the following:

(a) The name of the approved insurance provider; the person who may be contacted for further information regarding the request for an opportunity to offer a premium discount under the premium reduction plan; and the person who will be responsible for the administration of the premium reduction plan.

(b) A list of the States where the approved insurance provider wants the opportunity to offer a premium discount under the premium reduction plan.

(c) A detailed marketing plan that describes how the approved insurance provider will promote the premium reduction plan to all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers. With respect to the marketing plan, it must:

(1) Identify and utilize the appropriate media with the capacity to reach all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, in the State in which the premium reduction plan will be offered, such as advertising through farm journals, farm radio, community based organizations, etc.;

(2) Be in addition to any solicitation or advertising done by agents of the approved insurance provider; and

(3) Contain a certification by the person responsible for signing the SRA that any cost saving measures will not result in a reduction in service to any producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers in the State in which the premium reduction plan will be offered.

(d) A report of the total dollar amount of premium discount and the corresponding premium discount percentage by State paid for the previous reinsurance year (Such report must be provided to RMA not later than 15 days after making the premium discount payments); and

(e) Such other information as deemed necessary by RMA.

■ 8. Add a new § 400.717.

§ 400.717 New approved insurance providers.

There may be instances where a new approved insurance provider is entering the crop insurance program for the first time and such approved insurance provider is not affiliated with an MGA, a TPA, another approved insurance provider, or any other entity that possesses the infrastructure necessary to deliver the crop insurance program, that is currently or has previously participated in the crop insurance program.

(a) In such instances, the one time start-up costs that are associated with entering the crop insurance business (*e.g.*, creation of a claims system, interface with RMA's data acceptance system, initial marketing costs, set up charges) must be included in the Expense Exhibits required by the SRA, or the applicable regulations or approved procedures, but the costs may be amortized in equal annual amounts for a period of up to three years for the purpose of determining the efficiency on the documents described in § 400.720, in a manner determined by RMA.

(b) If the approved insurance provider is affiliated with a MGA, a TPA, another approved insurance provider that previously participated in the crop insurance program but such MGA, TPA, or other approved insurance provider can demonstrate that it no longer has the infrastructure to operate the program, the FCIC Board of Directors, in its sole discretion, can authorize the amortization of start-up costs in accordance with paragraph (a) of this section.

■ 9. Add a new § 400.718.

§ 400.718 RMA Review

If an insurance provider requests eligibility for the opportunity to offer a premium discount under the premium reduction plan:

(a) For the 2006 reinsurance year, RMA will notify the approved insurance provider not later than 30 days after the date the approved insurance provider submits its request for eligibility for the opportunity to offer a premium discount under a premium reduction plan, whether it is eligible.

(b) For all subsequent reinsurance years, RMA will notify the approved insurance provider at the same time it approves the Plan of Operations whether it is eligible.

(c) An approved insurance provider may be determined to be eligible for the opportunity to offer a premium discount under the premium reduction plan if, in the sole determination of RMA, all of the following criteria are met:

(1) All information required in § 400.716 is included in the request for the opportunity to offer a premium discount under the premium reduction plan;

(2) The marketing plan is designed to be effective at reaching all producers in the State, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers;

(3) The implementation of any activities to enable the approved insurance provider to pay a premium discount does not impede the approved insurance provider's ability to comply with all requirements of the approved procedures, law, and regulation;

(4) There must be a reasonable assurance that producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, insured by the approved insurance provider will not experience a reduction in service;

(5) The insurance provider can demonstrate that it is operationally and financially capable and ready to serve, all producers in that State; and

(6) The approved insurance provider's resources, procedures, and internal controls are adequate to provide a premium discount under the premium reduction plan, make approved premium discount payments in a timely manner, prevent unfair discrimination,

and comply with all applicable laws, regulations and approved procedures.

(d) If the approved insurance provider is determined by RMA to be eligible for the opportunity to provide a premium discount under the premium reduction plan, the approved insurance provider will be notified in writing by the Director, Reinsurance Services Division, or a designee or successor.

(e) Notification that an approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan is not a guarantee that a premium discount payment will be approved by RMA for the reinsurance year. Approval of a premium discount cannot be provided by RMA until the actual A&O costs and A&O subsidy are reported for the reinsurance year and RMA determines that all the requirements of §§ 400.714 through 400.722 have been met.

■ 10. Add a new § 400.719.

§ 400.719 Terms and conditions for the Premium Reduction Plan.

The following terms and conditions apply to all approved insurance providers that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan:

(a) RMA's determination that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan will only be effective for one reinsurance year. Approved insurance providers must reapply each reinsurance year in accordance with §§ 400.714 through 400.716.

(b) All procedural issues, questions, problems or clarifications with respect to implementation of the premium reduction plan must be addressed by the approved insurance provider by the deadline determined by RMA.

(c) The agents employed or under contract with an approved insurance provider that RMA has determined is eligible for the opportunity to offer a premium discount under the premium reduction plan must disclose to all producers, insured with the agent or inquiring about insuring with the agent, in writing the names of all approved insurance providers that the agent represents that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan.

(d) The approved insurance provider must provide to the Director, Reinsurance Services Division semi-annual reports, or more frequent reports as determined by RMA, that, along with other information obtained by RMA, permit RMA to accurately evaluate the effectiveness of the approved insurance provider's implementation of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain for each State listed by the approved insurance provider under § 400.716(b):

(1) The number of small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers making application; and

(2) The number, substance, and final or pending resolution of complaints from producers regarding the service received under the premium reduction plan.

(e) RMA will monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers.

(1) RMA may compare the composition of the approved insurance provider's book of business in a State with the composition of the books of business of other approved insurance providers in that State to assist in determining whether the marketing plan has been effective or there is credible evidence of unfair discrimination by the approved insurance provider or its agents.

(2) If at any time RMA determines that the marketing activities of the approved insurance provider are not effective in reaching small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or there is credible evidence of unfair discrimination by the approved insurance provider or its agents in any State listed by the approved insurance provider under § 400.716(b), RMA will take the appropriate action authorized in paragraph (j) of this section (Remedial measures may include additional targeted advertising by the approved insurance provider or other appropriate measures to ensure the insurance provider is adequately serving small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or that such unfair discrimination has been discontinued and corrective action taken).

(f) In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(g) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount for a State in accordance with § 400.720, it will be applicable to the reinsurance year in which the efficiencies were attained and the approved insurance provider must pay that dollar amount, and corresponding percentage of net book premium, for the premium discount to its policyholders in that State for that reinsurance year. If the approved insurance provider fails to pay this amount, the approved insurance provider:

(1) Will not be eligible for the opportunity to offer a premium discount for the reinsurance year immediately following RMA's approval of the payment of a premium discount; and

(2) Must disclose in all its promotional and advertising material that it was approved to pay a premium discount by RMA but elected not to pay such discount, unless approval to pay the premium discount was withdrawn by RMA, for the next two reinsurance years subsequent to the failure to pay the premium discount.

(h) For policyholders that were insured with the approved insurance provider in the reinsurance year from which the approved premium discount is applicable but are not currently insured with the approved insurance provider, any premium discount payments must be sent to the last known address of the policyholder.

(i) The approved insurance provider and its representatives, agents, employees and contractors must fully cooperate with RMA and any State or Federal government agencies in any review of the operations or activities of the approved insurance provider and its representatives, agents, employees and contractors, with respect to the premium reduction plan.

(j) At its sole discretion and upon written notice, RMA may withdraw a determination of eligibility for the opportunity to offer a premium discount under the premium reduction plan or approval of all or a part of a premium discount payment, preclude eligibility for the opportunity to offer a premium discount, or otherwise participate, under the premium reduction plan for a period determined by RMA commensurate with offense, take such other actions as authorized under the SRA, or require appropriate remedial measures as determined by RMA, if RMA determines that:

(1) Any approved insurance provider or its representative, agent, employee or contractor has failed to comply with any term or condition contained in 7 CFR 400.714 through 400.721; or

(2) The payment of a premium discount could adversely affect the financial or operational stability of the approved insurance provider, its MGA or TPA as required by applicable regulations or approved procedures.

(k) The insurance provider may be held solely responsible for the actions of its representatives, agents, employees or contractors with respect to any violation of any term or condition contained in §§ 400.714 through 400.721 or action under paragraph (j) of this section may be taken individually against the insurance provider or its representatives, agents, employees or contractors.

■ 11. Add a new § 400.720.

§ 400.720 Standards for approval of a premium discount.

For approval of a premium discount:

(a) If the approved insurance provider intends to offer a premium discount in a State listed by the approved insurance provider under § 400.716(b) based on efficiencies attained during the reinsurance year, the approved insurance provider must, not later than December 31 after the annual settlement for the reinsurance year, submit to RMA:

(1) An audit, in a format approved by RMA, of the Expense Exhibits provided with the Plan of Operations, and the estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits, certified by an independent certified public accountant with experience in insurance accounting, who must certify to the accuracy and completeness of the costs stated therein and the Expense Exhibits' conformance with the requirements of the SRA (The costs associated with such audit and certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's A&O costs for the purposes of determining an efficiency);

(2) A detailed description of all profit sharing arrangements that the approved insurance provider claims are not to be included as compensation (RMA reserves the right to request copies of such profit sharing contracts or other agreements); and

(3) The dollar amount, and corresponding percentage of net book premium, for the premium discount that the approved insurance provider will pay in the State.

(b) RMA will use the Expense Exhibits required to be submitted as part of the Plan of Operations to determine:

(1) Whether the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year for the entire book of business; and

(2) The actual dollar amount of efficiency attained by the approved insurance provider for the reinsurance year for each State where the approved insurance provider was eligible for the opportunity to offer a premium discount under the premium reduction plan. The dollar amount of efficiency and the dollar amount, and corresponding percentage of net book premium, for the premium discount must be prepared and submitted in accordance with approved procedures.

(i) For the 2006 reinsurance year, such approved procedures will be issued within 5 days after July 20, 2005; and

(ii) For all subsequent reinsurance years, such procedures will remain in effect unless revised and if such approved procedures will be revised, these approved procedures will be issued not later than January 1 before the start of the reinsurance year.

(c) For each State listed by the approved insurance provider under § 400.716(b) for which the insurance provider requests approval to pay a premium discount, RMA will compare the dollar amount, and corresponding percentage of net book premium, for the premium discount determined in accordance with applicable approved procedures with the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider.

(d) RMA may approve the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider if and to the extent that:

(1) The dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider does not exceed the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section; and

(2) If all other requirements of §§ 400.714 through 400.722 have been met.

(e) If the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider exceeds the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section, the approved insurance provider will be limited to paying the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA.

■ 12. Add a new § 400.721

§ 400.721 Determinations and reconsiderations.

(a) If RMA takes any action authorized in § 400.719(j), the Director, Reinsurance Services Division, or a designee or successor will notify the approved insurance provider or its representatives, agents, employees or contractors against whom such action is taken, as applicable, in writing:

(1) Of the action taken;

(2) The date such action is effective; and

(3) The basis for such action.

(b) If eligibility for the opportunity to offer a premium discount, or to participate, under the premium reduction plan is withdrawn, the approved insurance provider or agent, as applicable, must notify its policyholders it is no longer eligible to offer a premium discount, cease any advertising or other communication regarding a premium discount effective for the next sales closing date, and no premium discount may be distributed to any producer of the insurance provider or agent, as applicable, for the reinsurance year.

(c) If notice is provided under paragraph (a) of this section to an approved insurance provider or its representatives, agents, employees or contractors:

(1) The approved insurance provider or its representatives, agents, employees or contractors, as applicable, may request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days of the date stated on the notice provided in paragraph (a) of this section;

(2) Such request must provide a detailed narrative of the basis for reconsideration; and

(3) The Deputy Administrator of Insurance Services, or a designee or successor will issue its reconsideration decision not later than 45 days after receipt of the request for reconsideration.

(d) Reconsideration decisions issued in accordance with paragraph (c) of this section are considered as final administrative determinations rendered under § 400.169(a) and if the approved insurance provider or its representatives, agents, employees or contractors who received such reconsideration decision disagrees with this final administrative determination, it may appeal in accordance with § 400.169(d).

(e) If eligibility to offer a premium discount plan has been withdrawn by RMA under § 400.719(j), the approved insurance provider may request eligibility for the opportunity to offer a premium discount for the next applicable reinsurance year if the condition which was the basis for such withdrawal has been remedied.

■ 13. Add a new § 400.722.

§ 400.722 Consumer complaints.

Consumer complaints regarding an approved insurance provider's violation of the requirements of §§ 400.714 through 400.721 should be sent in confidence to RMA, attention: The Director of the Reinsurance Services Division, or a designee or successor.

(a) Consumer complaints must include:

(1) A specific citation of the requirement in §§ 400.714 through 400.721 that has allegedly been violated;

(2) A detailed listing of the actions alleged to have taken place that violate the requirement;

(3) Specific identification of persons involved in the violation, and

(4) The date, place and circumstances under which such violation allegedly occurred.

(b) Any complaint that does not meet the requirements in paragraph (a) of this section may be returned to the sender for further details before RMA can pursue investigation of the complaint.

(c) RMA may seek additional information to assist in investigating the complaint.

(d) If RMA's investigation determines there has been a violation of a requirement in §§ 400.714 through 400.721, it may take the appropriate action authorized under § 400.719(j).

Signed in Washington, DC, on July 13, 2005.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 05–14037 Filed 7–13–05; 3:54 pm]

BILLING CODE 3410–08–P

Federal Register

Wednesday,
July 20, 2005

Part III

Department of Housing and Urban Development

Notice of Availability of Draft Changes to HUD Handbook 4350.3 REV–1, "Occupancy Requirements of Subsidized Multifamily Housing Programs" and Request for Comments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4770–N–02; HUD–2005–0013]

Notice of Availability of Draft Changes to HUD Handbook 4350.3 REV–1, ''Occupancy Requirements of Subsidized Multifamily Housing Programs'' and Request for Comments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice advises the public that HUD is revising Handbook 4350.3 REV–1, ''Occupancy Requirements of Subsidized Multifamily Housing Programs.'' HUD will make available a copy of the draft, revised handbook on the HUD Web site and invites interested parties to comment on the revisions.

DATES: Comment Due Date: August 9, 2005.

ADDRESSES: A copy of HUD Handbook 4350.3 REV–1, CHG–2, ''Occupancy Requirements of Subsidized Multifamily Housing Programs'' can be obtained from the HUD Web site at *http://www.HUD.gov/offices/hsg/hsgmulti.cfm* or by calling HUD's Distribution Center at (202) 401–8811. This is not a toll-free number. Interested persons may submit comments regarding this notice to the Department of Housing and Urban Development, Attention: 4350.3 REV–1 Change 2 Comments, Room 6134, 451 Seventh Street, SW., Washington, DC 20410–8000. Communications should refer to the above docket number and title. Comments may also be submitted by e-mail to: *occupancy_handbookrevisions_comments@HUD.gov*.

FOR FURTHER INFORMATION CONTACT: Gail Williamson, Director, Housing Assistance Policy Division, Room 6138, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000, extension 2473 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice announces that HUD is revising the handbook entitled, ''Occupancy Requirements of Subsidized Multifamily Housing Programs'' (Handbook 4350.3 REV–1). In order to improve the quality of the handbook, HUD will make available a copy of the draft, revised handbook on the HUD website and invites interested parties to comment on the revisions. The transmittal at the front of the revised handbook provides an explanation of the revisions, which are noted in the text by a double asterisk (**) at the beginning and ending of each revision.

A copy of HUD Handbook 4350.3 REV–1, CHG–2 will be available for a period of 14 calendar days beginning July 20, 2005, at the HUD Web site, *http://www.HUD.gov/offices/hsg/hsgmulti.cfm*. Members of the public without access to the World Wide Web may obtain a copy of HUD Handbook 4350.3 REV–1, CHG–2 by contacting HUD's Distribution Center at (202) 401–8811. This is not a toll-free number. The draft, revised handbook, once posted to the Web site, will be available for 14 calendar days. All comments are due on or before August 9, 2005.

Interested members of the public may submit comments either electronically or by overnight mail to the address listed in the **ADDRESSES** section above. To be most helpful, comments should identify specific page and paragraph references.

Dated: July 12, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E5–3845 Filed 7–19–05; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
July 20, 2005

Part IV

The President

Presidential Determination No. 2005–28 of July 12, 2005—Presidential Determination Regarding Drawdown Under Section 506(a)(2) of the Foreign Assistance Act 1961, as Amended, To Furnish Anti-Terrorism Assistance to the Philippines

Proclamation 7913—Captive Nations Week, 2005

Executive Order 13383—Amending Executive Orders 12139 and 12949 in Light of Establishment of the Office of Director of National Intelligence

Federal Register
Vol. 70, No. 138
Wednesday, July 20, 2005

Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–28 of July 12, 2005

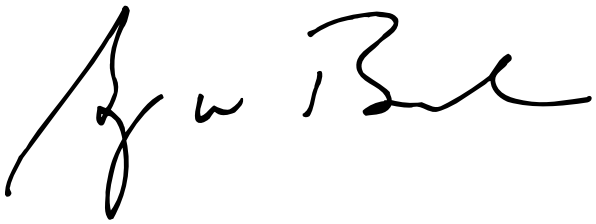
Presidential Determination Regarding Drawdown Under Section 506(a)(2) of the Foreign Assistance Act 1961, as amended, to Furnish Anti Terrorism Assistance to the Philippines

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2)(the ''Act''), I hereby determine that it is in the national interest of the United States to draw down articles, services, military education, and training from the Department of Defense for the purpose of providing anti-terrorism assistance for the Philippines.

I therefore direct the drawdown of up to $10 million of articles, services, military education, and training from the inventory and resources of the Department of Defense for the Philippines for the purposes and under the authorities of chapter 8 of part II of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 12, 2005.

[FR Doc. 05–14450
Filed 7–19–05; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 7913 of July 15, 2005

Captive Nations Week, 2005

By the President of the United States of America

A Proclamation

America stands for freedom and supports those who are oppressed. During Captive Nations Week, we reaffirm our commitment to advancing democracy, defending liberty, and protecting human rights around the world.

When President Eisenhower issued the first Captive Nations Week proclamation in 1959, freedom was being denied by communist regimes in Europe, Asia, and Latin America. Millions were deprived of their rights to freely practice religion, assemble in public, and exercise freedom of speech. The Cold War and the captivity of millions of people in Central and Eastern Europe have since ended, and we have witnessed the rise of democratic governments in countries across the globe.

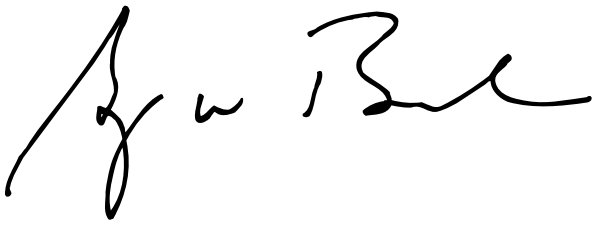
Building a free and peaceful world is the work of generations, and this work continues. America believes that freedom is God's gift to each man and woman in this world and that spreading freedom's blessings is the calling of our time. We are continuing to work to help spread liberty and democracy to people who have known fear and oppression. The gains in places like Afghanistan, Iraq, Ukraine, and Georgia have been achieved through the courage, determination, and sacrifice of millions of men and women in those countries, with the assistance of the United States and other allies.

As a Nation forged from the ideals of freedom, justice, and human dignity, we will continue speaking out on behalf of oppressed people. We will support the growth of democratic movements and institutions in every nation. This young century will be liberty's century, and during Captive Nations Week, we pledge to advance the cause of liberty for all people.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 17 through July 23, 2005, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their commitment to all those seeking liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–14451
Filed 7–19–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13383 of July 15, 2005

Amending Executive Orders 12139 and 12949 in Light of Establishment of the Office of Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section. 1. Section 1–103 of Executive Order 12139 of May 23, 1979, is amended by:

(a) striking ''(c) Director of Central Intelligence'' and inserting in lieu thereof ''(c) Director of National Intelligence'';

(b) striking ''(g) Deputy Director of Central Intelligence'' and inserting in lieu thereof ''(g) Director of the Central Intelligence Agency''; and

(c) adding at the end thereof ''(h) Principal Deputy Director of National Intelligence.''.

Sec. 2. Section 3 of Executive Order 12949 of February 9, 1995, is amended by:

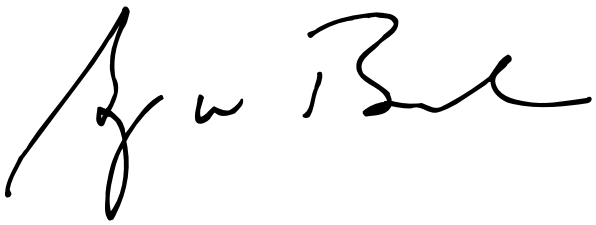
(a) striking ''(c) Director of Central Intelligence'' and inserting in lieu thereof ''Director of National Intelligence'';

(b) striking ''and'' at the end of subsection (f);

(c) striking ''(g) Deputy Director of Central Intelligence.'' and inserting in lieu thereof ''(g) Director of the Central Intelligence Agency; and''; and

(d) adding at the end thereof ''(h) Principal Deputy Director of National Intelligence.''.

Sec. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.



THE WHITE HOUSE,
July 15, 2005.

[FR Doc. 05–14452
Filed 7–19–05; 8:45 am]
Billing code 3195–01–P

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Federal Register

Vol. 70, No. 138

Wednesday, July 20, 2005

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FEDERAL REGISTER PAGES AND DATE, JULY

37985–38570 1
38571–38750 5
38751–39172 6
39173–39410 7
39411–39638 8
39639–39904 11
39905–40184 12
40185–40634 13
40635–40878 14
40879–41128 15
41129–41340 18
41341–41604 19
41605–41934 20

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7913 41931
Executive Orders:
12139 (Amended by EO 13383) 41933
12735 (See EO 13382) 38567
12938 (Amended by EO 13382) 38567
12949 (Amended by EO 13383) 41933
13094 (See EO 13382) 38567
13382 38567
13383 41933
Administrative Orders:
Memorandums:
Memorandum of June 29, 2005 39173
Memorandum of April 21, 2005 (Amended by Memorandum of July 1, 2005) 41341
Memorandum of July 1, 2005 41341
Presidential Determinations:
No. 2005-26 of July 4, 2005 40181
No. 2005-27 of July 4, 2005 40183
No. 2005-28 of July 12, 2005 41929

5 CFR

Ch. XIV 41605

7 CFR

305 41092
318 40879
319 .....40879, 41092
400 41822
946 41129
955 41605
983 .....39905, 40185
1469 41608
4274 38571
4280 41264
Proposed Rules:
97 40921
319 39194
868 39199
2902 38612

9 CFR

93 41608
94 41608
95 41608
Proposed Rules:
391 41635
590 41635
592 41635

10 CFR

72 40879
110 37985
625 39364
Proposed Rules:
72 40924

12 CFR

201 39411
620 40635
621 40635
650 40635
651 40635
652 40635
653 40635
654 40635
655 40635
Proposed Rules:
Ch. VII 39202, 40924

13 CFR

Proposed Rules:
106 39667

14 CFR

11 40156
21 40166
23 37994
25 .....39908, 39910
36 .....38742, 41610
39 .....38573, 38575, 38578, 38580, 38751, 38753, 38755, 39412, 39559, 39639, 39642, 39644, 39647, 39651, 39912, 40187, 40651, 40656
43 40872
71 .....37997, 38740, 39175, 39914, 39915, 39916, 39917, 41610, 41611, 41613
73 38740
91 .....38742, 40168, 41610
93 39610
97 39652
121 .....40156, 40168, 41134
125 40168
129 40168
382 41482
Proposed Rules:
39 .....38625, 38627, 38630, 38632, 38636, 38817, 38819, 38821, 38823, 39204, 39433, 39435, 41350, 41352, 41354
71 .....38053, 38055, 38056, 38826, 39973

15 CFR

740 41094
742 41094
743 41094
772 41094
774 41094
Proposed Rules:
303 38828

16 CFR

Proposed Rules:
23 38834

17 CFR

240 40614
270 39390
Proposed Rules:
36 39672
37 39672
38 39672
39 39672
40 39672

18 CFR

35 38757
Proposed Rules:
35 40941
131 40941
154 40941
157 40941
250 40941
281 40941
284 40941
300 40941
341 40941
342 40943
344 40941
346 40941
347 40941
348 40941
375 40941
385 40941

19 CFR

Proposed Rules:
101 38637
122 38637

20 CFR

1 41340
30 41340
404 38582
416 41135
646 40870
Proposed Rules:
416 39689

21 CFR

Ch. I 40880
520 ....40880, 41139
522 39918
529 41139
556 39918
Proposed Rules:
Ch. 1 41356
310 40232
341 ....40232, 40237

22 CFR

126 39919

23 CFR

Proposed Rules:
630 39692

25 CFR

124 40660

26 CFR

1 ....39653, 39920, 40189, 40661, 40663, 41343
26 41140
301 ....40669, 41144
602 ....39920, 40189, 40663
Proposed Rules:
1 ....38057, 39695, 40675
31 38057
35 40675
54 40675
301 ....40675, 41165

27 CFR

9 ....37998, 38002, 38004
Proposed Rules:
4 38058

28 CFR

Proposed Rules:
16 39696
45 39206

29 CFR

4022 40881
4044 40881
Proposed Rules:
1404 39209
1610 38060

30 CFR

250 41556
Proposed Rules:
934 38639

31 CFR

Ch. V 38256

32 CFR

321 38009
Proposed Rules:
285 40249
631 41641

33 CFR

100 ....38010, 39654, 39656, 40882
110 40885
117 ....38593, 38594, 40887
155 41614
156 41614
165 ....38013, 38015, 39176, 39923, 40885, 40888, 41343, 41345
Proposed Rules:
100 39697
117 41648
165 40944
167 38061

34 CFR

230 38017

36 CFR

7 38759

37 CFR

2 38768
7 38768
201 38022
251 38022
252 38022
257 38022
258 39178
259 38022
Proposed Rules:
201 41650
2563 41650

38 CFR

Proposed Rules:
3 39213

40 CFR

51 ....39104, 39413
52 ....38023, 38025, 38028, 38029, 38774, 38776, 39658, 39926, 40193, 40195, 41146
62 39927
63 ....38554, 38780, 39426, 39662, 40672
80 40889
81 38029
85 40420
86 40420
89 40420
90 40420
91 40420
92 40420
94 40420
180 ....38780, 38785, 38786, 40196, 40199, 40202, 40899, 41618, 41619
300 ....38789, 39180, 41625
372 39931
799 ....39624, 39630
1039 40420
1048 40420
1051 40420
1065 40420
1068 40420
1506 41148
Proposed Rules:
52 ....38064, 38068, 38071, 38073, 38837, 38839, 38840, 39974, 40946, 41166, 41652
55 38840
60 39870
62 39974
63 ....38554, 39441, 39457
80 40949
81 ....38073, 39215
85 39870
89 39870
94 39870
155 40251
194 38642
228 41167
261 41358
300 ....38845, 39217, 41653
1039 39870
1065 39870
1068 39870

41 CFR

Proposed Rules:
51-2 38080
51-3 38080
51-4 38080

42 CFR

414 39022
Proposed Rules:
52 40946
80 40949
484 40788
1001 38081

43 CFR

Proposed Rules:
3000 41532
3100 41532
3120 41532
3130 41532
3150 41532
3160 41532
3200 41532
3470 41532
3500 41532
3600 41532
3800 41532
3830 41532
3833 41532
3835 41532
3836 41532
3860 41532
3870 41532

44 CFR

64 ....38038, 41347
65 ....40909, 40913
67 40915
Proposed Rules:
67 ....39457, 40951, 40953, 40955, 40956

45 CFR

2510 39562
2520 39562
2521 39562
2522 39562
2540 39562
2550 39562

46 CFR

Proposed Rules:
Ch. I 39699, 41261

47 CFR

1 ....38794, 38795
15 38800
20 38794
43 38794
63 38795
64 38795
73 ....39182, 40212, 40213, 40214, 40215, 41629, 41630
76 40216
90 41631
Proposed Rules:
Ch. 1 41654
15 38845
22 40276
52 41655
54 41658
73 ....39217, 40277, 40278
76 38848

48 CFR

2101 41149
2102 41149
2103 41149
2104 41149
2105 41149
2106 41149
2109 41149
2110 41149
2114 41149
2115 41149
2116 41149
2131 41149
2132 41149
2137 41149
2144 41149
2146 41149
2149 41149
2152 41149
Proposed Rules:
Ch. II 39975
52 40279
204 39976
222 39978
225 39980

235 39976
249 39980
252 39976

49 CFR

209 38804
213 38804
214 38804
215 38804
216 38804
217 38804
218 38804
219 38804
220 38804
221 38804
222 38804
223 38804
225 38804
228 38804
229 38804
230 38804
231 38804
232 38804
233 38804
234 38804
235 38804
236 38804
238 38804
239 38804
240 38804
241 38804
244 38804
375 39949
571 ....38040, 39959, 40917, 41631
573 38805
575 39970
577 38805
1520 41586
1540 41586
1562 41586

Proposed Rules:

23 40973
192 41174
193 41174
195 41174
571 ....40280, 40974
572 40281

50 CFR

300 41159
600 40225
622 ....39187, 41161
648 ....39190, 39192, 39970, 41348
660 ....38596, 41163
679 ....38052, 38815, 39664, 40231, 41163, 41164

Proposed Rules:

17 ....38849, 39227, 39981, 41183
32 40108
216 41187
223 ....38861, 39231
224 39231
229 40301
600 39700
648 41189
660 ....40302, 40305

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 20, 2005

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Dow AgroSciences LLC; published 7-20-05
- Two isopropylamine salts of alkyl C4 and alkyl C8- 10 ethoxyphosphat esters; correction; published 7-20-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 6-15-05
- Bombardier; published 6-15-05
- Fokker; published 6-15-05

Class E airspace; published 7-20-05

Noise standards:
- Subsonic jet airplanes and subsonic transport category large airplanes
  - Correction; published 7-20-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Grapes grown in California and imported grapes; comments due by 7-25-05; published 5-25-05 [FR 05-10440]

Prunes (dried) produced in—
- California; comments due by 7-26-05; published 5-27-05 [FR 05-10469]

Tomatoes grown in—
- Florida; comments due by 7-26-05; published 5-27-05 [FR 05-10468]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Tuberculosis in cattle and bison; movement without individual tuberculin test; comments due by 7-25-05; published 5-24-05 [FR 05-10308]

Plant-related quarantine, domestic:
- Pine shoot beetle; comments due by 7-25-05; published 5-26-05 [FR 05-10551]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]
- Cottonseed Payment Program; comments due by 7-25-05; published 6-24-05 [FR 05-12485]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
- Senior Farmers' Market Nutrition Program; comments due by 7-25-05; published 5-26-05 [FR 05-10388]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Hazard analysis and critical control point (HACCP) system—
  - Mechanically tenderized beef products; compliance; comments due by 7-25-05; published 5-26-05 [FR 05-10471]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Loan and purchase programs:
- Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]

Reports and guidance documents; availability, etc.:
- National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:
- Accessibility guidelines—
  - Large and small passenger vessels; comments due by 7-28-05; published 3-22-05 [FR 05-05636]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Oregon Coast evolutionary significant unit of coho salmon; listing determination; comments due by 7-28-05; published 6-28-05 [FR 05-12350]
- Status review—
  - North American green sturgeon; southern distinct population; comments due by 7-27-05; published 7-6-05 [FR 05-13264]
- West Coast Oncorhynchus mykiss; listing determinations; comments due by 7-28-05; published 6-28-05 [FR 05-12348]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Capital assets manufactured in United States; purchase incentive program; comments due by 7-25-05; published 5-24-05 [FR 05-10233]
- Pilot Mentor-Protege Program; comments due by 7-25-05; published 5-24-05 [FR 05-10226]
- Quality assurance; comments due by 7-25-05; published 5-24-05 [FR 05-10234]
- Service contracts and task and delivery orders approval; comments due by 7-25-05; published 5-24-05 [FR 05-10225]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:
- Parris Island, SC; Marine Corps Recruit Depot; comments due by 7-25-05; published 6-23-05 [FR 05-12461]

Navigation regulations:
- Lake Washington Ship Canal, Hiram M. Chittenden Locks, WA; scheduled operational hours; modification procedures; comments due by 7-25-05; published 5-25-05 [FR 05-10432]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:
- Vocational and adult education—
  - Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:
- Environmental Management Site-Specific Advisory Board—
  - Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:
- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Natural Gas Policy Act; natural gas companies (Natural Gas Act):
- Natural gas reporting regulations; modification; comments due by 7-25-05; published 6-10-05 [FR 05-11543]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Washington; comments due by 7-29-05; published 6-29-05 [FR 05-12713]

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 7-27-05; published 6-27-05 [FR 05-12659]

Pennsylvania; comments due by 7-25-05; published 6-24-05 [FR 05-12581]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:

Maine; comments due by 7-25-05; published 6-23-05 [FR 05-12453]

Vermont; comments due by 7-25-05; published 6-23-05 [FR 05-12454]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Price cap local exchange carriers; special access rates; comments due by 7-29-05; published 7-20-05 [FR 05-14420]

Telephone Consumer Protection Act of 1991; implementation—

Interstate telemarketing calls; declaratory ruling petitions; comments due by 7-29-05; published 6-29-05 [FR 05-12466]

Interstate telemarketing calls; declaratory ruling petitions; comments due by 7-29-05; published 6-29-05 [FR 05-12467]

Radio frequency devices:

Digital television receiver tuner requirements; comments due by 7-27-05; published 7-6-05 [FR 05-13029]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicaid and Medicare:

Hospice care; participation conditions; comments due by 7-26-05; published 5-27-05 [FR 05-09935]

Medicare:

Cost reports; electronic submission; comments due by 7-26-05; published 5-27-05 [FR 05-10570]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Dietary noncariogenic carbohydrate sweeteners and dental caries; health claims; comments due by 7-27-05; published 5-13-05 [FR 05-09608]

Salmonella; shell egg producers to implement prevention measures; comments due by 7-25-05; published 6-8-05 [FR 05-11407]

Human cells, tissues, and cellular and tissue-based products; donor screening and testing, and related labeling; comments due by 7-25-05; published 5-25-05 [FR 05-10583]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HEALTH AND HUMAN SERVICES DEPARTMENT

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—

Data collection program; final adverse actions reporting; correction; comments due by 7-25-05; published 6-24-05 [FR 05-12481]

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—

Data collection program; final adverse actions reporting; correction; comments due by 7-25-05; published 6-24-05 [FR 05-12481]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Virginia; comments due by 7-25-05; published 6-8-05 [FR 05-11397]

Regattas and marine parades:

Pasquotank River, Elizabeth City, NC; marine events; comments due by 7-28-05; published 6-28-05 [FR 05-12730]

Thunder over the Boardwalk; comments due by 7-26-05; published 7-11-05 [FR 05-13576]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Alaska; comments due by 7-25-05; published 6-23-05 [FR 05-12439]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Federal credit unions; fidelity bond and insurance coverage; comments due by 7-25-05; published 5-25-05 [FR 05-10380]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

PERSONNEL MANAGEMENT OFFICE

Training:

Reporting requirements; comments due by 7-26-05; published 5-27-05 [FR 05-10641]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 7-29-05; published 6-29-05 [FR 05-12839]

Boeing; comments due by 7-29-05; published 6-14-05 [FR 05-11708]

Bombardier; comments due by 7-26-05; published 5-27-05 [FR 05-10536]

Burkhart Grob; comments due by 7-25-05; published 6-21-05 [FR 05-12178]

Fokker; comments due by 7-29-05; published 6-29-05 [FR 05-12838]

Rolls-Royce plc; comments due by 7-26-05; published 5-27-05 [FR 05-10635]

Turbomeca S.A.; comments due by 7-26-05; published 5-27-05 [FR 05-10295]

Airworthiness standards:

Special conditions—

Diamond Aircraft Industries; comments due by 7-28-05; published 6-28-05 [FR 05-12720]

Class E airspace; comments due by 7-25-05; published 6-8-05 [FR 05-11326]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Civil monetary penalties; inflation adjustment; comments due by 7-25-05; published 5-25-05 [FR 05-10366]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Limitations on benefits and contributions under qualified plans; comments due by 7-25-05; published 5-31-05 [FR 05-10268]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

USA PATRIOT Act; implementation—

Anti-money laundering programs for dealers in precious metal, stones, or jewels; comments due by 7-25-05; published 6-9-05 [FR 05-11431]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 120/P.L. 109–22

To designate the facility of the United States Postal Service located at 30777 Rancho California Road in Temecula, California, as the "Dalip Singh Saund Post Office Building". (July 12, 2005; 119 Stat. 365)

H.R. 289/P.L. 109–23

To designate the facility of the United States Postal Service located at 8200 South Vermont Avenue in Los Angeles, California, as the "Sergeant First Class John Marshall Post Office Building". (July 12, 2005; 119 Stat. 366)

H.R. 324/P.L. 109–24

To designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the "Arthur Stacey Mastrapa Post Office Building". (July 12, 2005; 119 Stat. 367)

H.R. 504/P.L. 109–25

To designate the facility of the United States Postal Service located at 4960 West Washington Boulevard in Los Angeles, California, as the "Ray Charles Post Office Building". (July 12, 2005; 119 Stat. 368)

H.R. 627/P.L. 109–26

To designate the facility of the United States Postal Service located at 40 Putnam Avenue in Hamden, Connecticut, as the "Linda White-Epps Post Office". (July 12, 2005; 119 Stat. 369)

H.R. 1072/P.L. 109–27

To designate the facility of the United States Postal Service located at 151 West End Street in Goliad, Texas, as the "Judge Emilio Vargas Post Office Building". (July 12, 2005; 119 Stat. 370)

H.R. 1082/P.L. 109–28

To designate the facility of the United States Postal Service located at 120 East Illinois Avenue in Vinita, Oklahoma, as the "Francis C. Goodpaster Post Office Building". (July 12, 2005; 119 Stat. 371)

H.R. 1236/P.L. 109–29

To designate the facility of the United States Postal Service located at 750 4th Street in Sparks, Nevada, as the "Mayor Tony Armstrong Memorial Post Office". (July 12, 2005; 119 Stat. 372)

H.R. 1460/P.L. 109–30

To designate the facility of the United States Postal Service located at 6200 Rolling Road in Springfield, Virginia, as the "Captain Mark Stubenhofer Post Office Building". (July 12, 2005; 119 Stat. 373)

H.R. 1524/P.L. 109–31

To designate the facility of the United States Postal Service located at 12433 Antioch Road in Overland Park, Kansas, as the "Ed Eilert Post Office Building". (July 12, 2005; 119 Stat. 374)

H.R. 1542/P.L. 109–32

To designate the facility of the United States Postal Service located at 695 Pleasant Street in New Bedford, Massachusetts, as the "Honorable Judge George N. Leighton Post Office Building". (July 12, 2005; 119 Stat. 375)

H.R. 2326/P.L. 109–33

To designate the facility of the United States Postal Service located at 614 West Old County Road in Belhaven, North Carolina, as the "Floyd Lupton Post Office". (July 12, 2005; 119 Stat. 376)

S. 1282/P.L. 109–34

To amend the Communications Satellite Act of 1962 to strike the privatization criteria for INTELSAT separated entities, remove certain restrictions on separated and successor entities to INTELSAT, and for other purposes. (July 12, 2005; 119 Stat. 377)

Last List July 13, 2005

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