AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

6–25–03 Wednesday
Vol. 68 No. 122 June 25, 2003

Pages 37693–37930

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Contents

Federal Register

Vol. 68, No. 122

Wednesday, June 25, 2003

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agency for Toxic Substances and Disease Registry
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37827–37828

Agricultural Marketing Service
RULES
Cherries (tart) grown in—
Michigan et al., 37726–37730

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Federal Crop Insurance Corporation
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37865–37866

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Portland International Airport, OR; livestock exportation port designation
Withdrawn, 37730
Plant-related quarantine, foreign:
Fruits and vegetables, imported, 37903–37923
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 37774
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37793–37794

Army Department
See Engineers Corps

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37797

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37827–37828

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37828–37830
Grants and cooperative agreements; availability, etc.:
Early Learning Opportunities Act discretionary grants, 37830–37846

Coast Guard
RULES
Drawbridge operations:
New York, 37742
Navigation and navigable waters; technical, organizational, and conforming amendments, 37738–37742

Commerce Department
See Census Bureau
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37796–37797

Defense Department
See Engineers Corps
See Navy Department

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Los Angeles County, CA—
Port of Los Angeles Berths 97–109 Terminal Improvement Project, 37803–37805

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 37746–37749
Indiana, 37742–37744
Utah, 37744–37746
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Buprofezin, 37765–37772
Flufenacet, etc., 37749–37759
Maneb, etc., 37759–37765
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Antimicrobial formulations for food-contact surface sanitizing solutions; active and inert ingredients, 37778–37792
Water programs:
Water quality standards—
South San Francisco Bay, CA; copper and nickel; Federal aquatic life water quality criteria withdrawn, 37925–37929
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37808–37809

Meetings:
FIFRA Scientific Advisory Panel, 37809
Pesticide, food, and feed additive petitions:
Valent U.S.A. Corp., 37813–37820
Pesticide programs:
Risk assessments—
Imazalil, 37809–37811
Pesticide registration, cancellation, etc.:
Zep Manufacturing Co. et al., 37811–37813
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 37820–37824

Farm Credit Administration
NOTICES
Farm credit system:
Loan policies and operations—
Loan syndication transactions, 37824

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37795

Federal Aviation Administration
RULES
Air carrier certification and operations:
Fuel tank system safety assessments; compliance deadline extension; correction, 37735
Airworthiness directives:
Rolls-Royce plc, 37735–37738
PROPOSED RULES
Airworthiness directives:
International Aero Engines, 37774–37776

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
Direct broadcast satellite service; policy and service rules; correction, 37772
NOTICES
Meetings:
Consumer Advisory Committee, 37824–37825
Rulemaking proceedings; petitions filed, granted, denied, etc., 37825

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
General administrative regulations, group risk plan of insurance regulations, and common crop insurance regulations, 37697–37726

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Bangor Hydro-Electric Co. et al., 37806–37807
Meetings; Sunshine Act, 37807–37808

Federal Maritime Commission
NOTICES
Agreements; additional information requests:
Indamex Agreement, 37825
Agreements filed, etc., 37825–37826
Investigations, hearings, petitions, etc.:
Monarch Shipping Lines, Inc., et al., 37826
Ocean transportation intermediary licenses:
Arrow Worldwide Logistics, Inc., et al., 37826–37827
Pallets In Motion et al., 37827

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37890–37891

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 37827

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
St. Louis, MO; Metro South Study Area; transit improvements, 37891–37892

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37846–37847
Grants and cooperative agreements; availability, etc.:
Food safety and security research—
Food borne illness reduction and food supply, food additives, dietary supplements, and cosmetics protection, 37847–37850
Meetings:
Severe acute respiratory syndrome (SARS) diagnostic tests; evaluation methods; workshop, 37850

Food and Nutrition Service
RULES
Food Stamp Program:
Electronic benefit transfer systems interoperability and portability, 37693–37697

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Recordkeeping and registration requirements; policy statement, 37730–37735

Forest Service
NOTICES
Environmental statements; notice of intent:
Caribou-Targhee National Forest, ID, 37795
Meetings:
Resource Advisory Committees—
Lincoln County, 37795–37796
Resource Advisory Councils—
South Gifford Pinchot National Forest, 37796

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Historic Preservation, Advisory Council
NOTICES
Meetings, 37793

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Tribal courts, 37857–37861

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37902
Meetings:
Taxpayer Advocacy Panels, 37902

International Trade Commission
NOTICES
Import investigations:
Saccharin from—
China, 37863–37864

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Prisons Bureau
NOTICES
Meetings:
Heavy duty diesel engine consent decrees, 37864
Pollution control; consent judgments:
Burkel, David P., et al, 37864
Conoco Inc., 37864–37865
Gopher State Ethanol, Inc., 37865
Weyerhaeuser Co., 37865

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Utah, 37861

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37866

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37892–37893

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 37850–37854
Meetings:
National Institute of Allergy and Infectious Diseases, 37854
National Institute on Alcohol Abuse and Alcoholism, 37854
Scientific Review Center, 37854–37857

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
North Atlantic swordfish; correction, 37773
Vessel monitoring systems; use by pelagic longline vessels, 37772–37773
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Intent to evaluate performance, 37798–37799
Marine mammals:
Incidental taking; authorization letters, etc.—
San Nicolas Island, CA; research activities; California sea lions, Pacific harbor seals, and northern elephant seals, 37799–37802
Meetings:
Gulf of Mexico Fishery Management Council, 37802

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Rocky Mountain National Park, CO, 37861
Environmental statements; availability, etc.:
Chesapeake Bay, MD; special resource study, 37861–37862
Great Basin National Park, NV, 37862
Statue of Liberty National Monument and Ellis Island, NY and NJ, 37862
National Register of Historic Places:
Pending nominations, 37862–37863

National Science Foundation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37866–37867

Navy Department
NOTICES
Environmental statements; availability, etc.:
Marine Corps Base Camp Pendleton, CA; advanced amphibious assault vehicle, 37805–37806

Nuclear Regulatory Commission
NOTICES
Meetings:
Radiation Standards Interagency Steering Committee, 37867–37868
Reactor Safeguards Advisory Committee, 37868–37869

Patent and Trademark Office
NOTICES
Reports and guidance documents; availability, etc.:
Official Gazette of U.S. Patent and Trademark Office-Trademarks; change in publication format from paper to electronic, 37803

Prisons Bureau
PROPOSED RULES
Inmate control, custody, care, etc.:
Good conduct time; aliens with confirmed orders of deportation, exclusion, or removal, 37776–37778

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 37894–37896
Hazardous materials transportation:
Safety advisories—
Compressed gas cylinders; unauthorized marking, 37893–37894

Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37795

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37795

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37795

Securities and Exchange Commission
NOTICES
Joint Industry Plan:
International Securities Exchange, Inc., et al., 37869–37870
Securities:
Foreign securities submitting information under exemption; list, 37870–37880
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 37880–37884
Chicago Board Options Exchange, Inc., 37884–37885
National Association of Securities Dealers, Inc., 37886–37889
New York Stock Exchange, Inc., 37889

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 37889–37890

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

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 37896–37902

Separate Parts In This Issue

Part II
Agriculture Department, Animal and Plant Health Inspection Service, 37903–37923

Part III
Environmental Protection Agency, 37925–37929

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
274.....37693
300.....37904
319.....37904
400.....37697
407.....37697
457.....37697
930.....37726

9 CFR
91.....37730
320.....37730
381.....37730

Proposed Rules:
77.....37774

14 CFR
21.....37735
39.....37735
91.....37735
121.....37735
125.....37735
129.....37735

Proposed Rules:
39.....37774

28 CFR

Proposed Rules:
523.....37776

33 CFR
1.....37738
3.....37738
5.....37738
52.....37738
100.....37738
110.....37738
117.....37742
151.....37738
154.....37738
155.....37738
162.....37738
165.....37738
173.....37738
174.....37738

40 CFR
52 (3 documents) 37742, 37744, 37746
180 (3 documents) 37749, 37759, 37765

Proposed Rules:
131.....37926
180.....37778

47 CFR
25.....37772

50 CFR
635 (2 documents) 37772, 37773

Rules and Regulations

Federal Register

Vol. 68, No. 122

Wednesday, June 25, 2003

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.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 274

[Amendment No. 384]

RIN 0584–AC91

Food Stamp Program: Electronic Benefit Transfer (EBT) Systems Interoperability and Portability

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides final rulemaking for an interim rule published on August 15, 2000. It implements legislation in accordance with the Electronic Benefit Transfer Interoperability and Portability Act of 2000. This rule finalizes revisions to the Food Stamp Program regulations to ensure that recipients can use their electronic food stamp benefits across state borders. The regulations require interoperable state electronic issuance systems and establish national standards to achieve this requirement. One hundred percent Federal funding is available to pay for the operational cost of this functionality, up to a national annual limit of $500,000. Costs beyond this level will be covered at the standard fifty percent program reimbursement rate for State administrative costs. Based on the Department's experience to date, it is not expected that costs will exceed $500,000.

DATES: This rule is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lizbeth Silbermann, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, or telephone (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule which requires mandatory interoperability of Food Stamp Program Electronic Benefit Transfer (EBT) Systems and portability of electronically-used benefits nationwide in accordance with specific requirements set forth in the Electronic Benefit Transfer Interoperability and Portability Act of 2000. FNS is not aware of any case where any of these provisions would in fact preempt State law and no comments were made to that effect. This rule also does not impose substantial direct compliance costs on State and local governments. Some of the provisions, although not previously required by food stamp regulations, have already been implemented by State agencies and, therefore, have no incremental costs associated with them. Furthermore, the Federal government will pay 100 percent for the cost of switching and settling interstate food stamp transactions, up to an annual nationwide limit of $500,000. Under current pricing trends, there is no indication that total costs for switching and settling interstate food stamp transactions will exceed the limit. Should this occur, however, State agencies will continue to be paid at the 50 percent reimbursement rate for the amount above the limit. The provisions implemented by this rule are mandated by the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Public Law No. 106–171. Therefore, a federalism summary impact statement is not necessary under Section 6 of Executive Order 13132.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State welfare agencies will be the most affected to the extent that they administer or operate EBT services for Food Stamp Program benefit delivery.

Paperwork Reduction Act

This rule does not alter the reporting or recordkeeping requirements contained in the interim rule. Those requirements have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB control number 0348–0004 for the SF–270 (Request for Advance or Reimbursement) and 0348–0038 for the SF–269A (Financial Status Report—Short Form).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be followed. In the Food Stamp Program, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(11) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures

issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Public Law 104–4

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 the UMRA, FNS 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 the UMRA generally requires FNS 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) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

In this rule, the U.S. Department of Agriculture (Department), FNS finalizes revisions to the Food Stamp Program (FSP) regulations to require interoperability of all State EBT Systems and portability of all electronically-issued benefits. This requirement is in accordance with the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Pub. L. 106–171, (hereinafter ''Pub. L. 106–171'') which amended Section 7(k) of the Food Stamp Act of 1977, 7 U.S.C. 2016(k), to mandate nationwide interoperability of FSP EBT systems and portability of electronically issued benefits and directs the Secretary to establish standards to accomplish this. In accordance with the regulations promulgated by the Secretary, the Department will pay one hundred percent of the costs incurred by a State agency for switching and settling transactions, up to an annual limit of $500,000 nationwide. Pub. L. 106–171 required the Department to promulgate regulations to require interoperability and establish a uniform national standard of interoperability for Food Stamp EBT systems within 210 days of its enactment. In order to meet this requirement, interim regulations were published in the **Federal Register** on August 15, 2000 at 65 FR 49719. This final action takes the comments received in response to the interim rulemaking into account. Readers are referred to the interim regulation for a more complete understanding of this final action.

Readers should note that another EBT rule was published in the **Federal Register** at around the same time that the interim interoperability rule was published. That rule, *EBT Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996* (65 FR 59105, October 4, 2000), redesignated several paragraphs in the EBT regulations. Therefore, readers should refer to the *Code of Federal Regulations* (CFR) for the most accurate regulatory citations of provisions implemented by the interim rule. Furthermore, this rule reinstates a paragraph from the August 15, 2000 interim Interoperability rule that was inadvertently deleted by the October 4, 2000 EBT Provisions of the PRWORA rule regarding the interoperability funding provisions.

Comments on the interim rule were solicited through November 13, 2000. Eight comment letters were received in response to the interim rule. Comments were received from 5 State agencies, one retailer association, one EBT processor, and one public interest group. This final rule makes one revision to the interim regulations, taking into consideration all comments received.

In general, the commenters supported EBT system interoperability and food stamp benefit portability. Various provisions of the interim rule mandated interoperability of FSP EBT systems and the portability of FSP benefits by requiring: The use of the EBT standard message format; the establishment of the necessary telecommunication links; the use of an Issuer Identification Number on the State's EBT card; and the use of the Retailer EBT Data Exchange (REDE) system. The rule also provides for 100 percent enhanced Federal funding for the cost of switching and settling interstate EBT food stamp transactions, up to an annual nationwide limit of $500,000. The specific provisions are discussed below.

Interoperability Mandate

The interim rule mandated that each State agency implement the functionality for nationwide interoperability of their EBT systems and portability of electronically-issued food stamp benefits by October 1, 2002. The interim rule provided for exemptions from the deadline for State agencies with signed contracts before October 16, 2000 until they re-negotiate or reprocure their EBT contracts. The rule also exempted Smart Card systems from the mandate until the Department determines that a practicable technological method is available for interoperability with on-line systems. We received no comments opposing the mandate. Three commenters expressed support for the interoperability and portability of FSP benefits because it ensures that food stamp recipients will be able to use their food stamp benefits at authorized retail stores across the country in the same way they were able to use paper food coupons.

System Standards for Interoperability

The interim rule established uniform national standards of interoperability and portability based on the standards used by a majority of State agencies. Although the Departmental standards are based on the Quest Operating Rules (hereinafter ''Quest''), which have already been adopted by a majority of State agencies, the Department did not adopt Quest in its entirety. Instead the Department chose to require only those components that are essential to interoperability. One commenter supported this decision because it allows the Quest standards to be modified to reflect the emerging industry practices without the burden of obtaining a change in federal regulation. However, two other commenters opposed it, believing that all State agencies should follow the Quest rules to ensure standardization and, therefore, nationwide interoperability.

The Department is aware of no other technical standards, other than those established in the rule, that are fundamental to the achievement of nationwide interoperability. Furthermore, the Quest rules contain requirements that are not essential to interoperability but that would require procedural and card modifications at an expense to the State agencies that have chosen not to adopt the Quest rules. If the Department were to require all State agencies to adopt the Quest rules in their entirety, this would impose added burdens, costs, and rigidity without strong justification. Accordingly, this rule maintains the interoperability standards established in the interim rule and does not specifically require State agencies to adopt Quest.

ISO 8583 Message Format

The interim final rule required State agencies to use the International Organization for Standards (ISO) 8583 message format, modified for EBT, in order to facilitate interstate transactions. One commenter opposed language

which requires State agencies to adopt the ISO 8583 message format in ''a version mutually agreed to between the authorization agent and the party connected for all transactions.'' Instead, the commenter supported adoption of the ISO standard currently being developed by the American National Standards Institute (ANSI) X9A11 EBT Working Group. The Department would like to clarify that the provision requires State agencies to use the ISO 8583 message format as updated by the American National Standards Institute (ANSI). The requirement refers to the base 8583 message format in order to provide enough flexibility to ensure automatic updates of the message format by State agencies without the need to issue new regulations in the future. The Department, therefore, would expect State agencies to update the message format specifications of their respective EBT systems in accordance with the most current version of the ISO 8583 message format upon adoption by ANSI or reprocurement of a State EBT contract.

Issuer Identification Number (IIN)

The interim final rule requires that the Primary Account Number (PAN) on the State-issued EBT card be standardized to include State routing information so that transactions can be routed to the appropriate State system for authorization, regardless of the transaction's point of origin. There were no comments opposing the requirement to include the Issuer Identification Number (IIN) in the PAN. However, one commenter requested clarification regarding the use of the term ''IIN'', and opposed the requirements regarding the distribution and updating of the State IIN files.

Specifically, the commenter requested clarification as to whether an ''IIN'' is the same as a Bank Identification Number (BIN). We consider the two terms to be interchangeable. We chose to use the term, ''IIN,'' because the number is used to route transactions to the various State authorization systems and not to banking institutions as the term ''BIN'' implies.

The commenter also opposed language which requires each State agency to be responsible for distributing all State IINs to each retailer, processor, or acquirer that is directly connected to the State's authorization system. Instead, the commenter believes that State IIN distribution should be the responsibility of the Federal government to avoid excessive and redundant updates. We are in agreement that redundant updates of IIN information should be avoided. However, in the time since FNS published the interim rule, several State agencies implemented interoperability without any indications of redundant IIN distribution, nor was redundant IIN distribution raised as a possible issue by any of the parties involved.

Although the Department is directing the interoperability provisions to all 53 State agencies, most State agencies delegate responsibilities to their prime EBT contractor or other designated agent of the State. This results in many fewer entities involved in the IIN dissemination process. Furthermore, because FNS does not have a direct relationship with the processors or acquirers that are directly connected to the State agency's authorization system, having FNS be responsible for distributing IINs to those entities would place a greater burden on State agencies. Each State agency would be responsible for ensuring that FNS has the most current listing and contact information of such entities. State agencies would also need to inform FNS when a new processor or acquirer enters the system and necessitates the IIN information. Therefore, the requirement that each State agency be responsible for the distribution of State IINs is unchanged in this rule.

The commenter further questioned how a State agency could ensure that parties not directly connected to its system update their IIN information. Because of the several different levels of third party service providers and acquirers involved in the routing of EBT transactions, we understand the commenter's concern with getting information updated throughout the system. State agencies must, therefore, use the required third party processor (TPP) agreements to ensure that IIN files or routing tables are updated by all entities involved. These are the agreements each State agency is required to enter into with a TPP or acquirer directly connected to its authorization system. Once the agreements are in place, each TPP or acquirer has primary responsibility for having all the State IINs loaded into its system.

Third Party Processor

One comment was received regarding the third party processor interface requirements. The interim rule requires each terminal operator to interface directly with a State authorization system or with a third party service provider to obtain access to one or more State authorization systems. The commenter opposed the provision, believing that it does not allow retailers to connect directly to a State agency's EBT processor. We would like to clarify that, by referencing direct interfaces with a State's authorization systems, we are referring to interfaces with a State agency's EBT processor or transaction switching agent. The purpose of the provision is to ensure that terminal operators make the necessary accommodations that will enable them to accept EBT cards from all States without requiring a system with multiple connections. Therefore, giving terminal operators the option to directly connect with a State's authorization system or with a third party processor provides them with the flexibility to establish the required interfaces in an efficient manner.

FNS REDE System

The interim final rule requires State agencies or their designated agent to access the FNS automated REDE system to update retailer authorization information on a daily basis. The requirement ensures that State agencies' EBT systems are using the most current Federally posted information on retailer authorizations nationwide when approving in-State and out-of-State EBT transactions. The requirement also helps to improve the efficiency of retailer operations overall. One commenter considered the requirement an unnecessary, time-consuming, and unfunded mandate due to the added time needed for additional ''checks.'' We would like to clarify that transactions do not actually touch the national REDE file. Instead, the contractor uses the REDE file to update its own retailer database which is used to authorize transactions. While we understand that this is a new requirement, most State agencies or their vendors were already accessing REDE voluntarily prior to the publication of the interim rule because the manual process of receiving updated information via telefax or e-mail was more cumbersome. Currently, all State agencies that operate an EBT system are using the FNS automated REDE system. None of these State agencies have indicated that the system is overly burdensome. Furthermore, the requirement that State agencies access the REDE system on a daily basis is consistent with the level of importance we place on ensuring that food stamp benefits be approved only at authorized retailer locations.

The commenter also asked for clarification on State agencies' responsibility for the accuracy of the REDE file. This provision does not make State agencies responsible for the accuracy of the REDE file, but rather for

downloading REDE updates on a daily basis.

Border Stores and Manual Vouchers

Except where necessary for border store access, the interim final rule excludes manual transactions from the interoperability requirements. In general, commenters were in support of the requirement that manual transactions continue to be interoperable in border stores necessary for access, with one commenter stating that all EBT retailers should be able to process interstate manual transactions nationwide. However, two commenters opposed the requirement that any retailer be required to process interstate manual transactions because of the administrative burden to the retailer. Although we understand this concern, border store retailers are already required to have the capability to participate in the neighboring State EBT system via a manual voucher process when the system is down or if the retailer is not equipped with a POS device. The requirement is in place because border stores, by definition, are necessary for clients to be able to make food stamp purchases without having to travel excessive distances. State agencies must, therefore, ensure that there is a process in place for these clients to purchase food regardless of system availability at the time. Given the high degree of client dependence on these stores and because the interim rule does not place an additional burden on these retailers, the Department is maintaining the manual voucher requirement in the final rule.

Benefit Conversion

The interim rule requires State agencies to have the capability to convert electronic benefits to paper coupons when the household relocates to a State that is not interoperable with, and where electronic benefits are not portable from, the household's current State of residence. One commenter opposed the requirement because retailers are increasingly reluctant to accept coupons from recipients and banks are refusing to redeem coupons for retailers. Although other commenters did not oppose the requirement under current EBT implementation realities, they wanted acknowledgement that coupons will soon become obsolete.

The Department is indeed preparing for the time when paper coupons will no longer be needed. The Department is also sympathetic to State agency concerns that as EBT is implemented in the remaining State agencies, coupons will become increasingly unfamiliar to both clients and retailers. Currently, there are only six State agencies that do not have a Statewide EBT system in place. Four of these State agencies are scheduled to have EBT fully implemented within the next year, at which time approximately 95 percent of all food stamp benefits will be issued electronically.

The Department is also mindful, however, of Ohio and Wyoming's indefinite off-line exemptions from the interoperability requirements. Although many third party processor stores in these two States are able to accept out-of-State EBT cards, no retailers in the other States can accept the Ohio and Wyoming EBT smartcards. Therefore, the long-term impacts of eliminating the benefit conversion requirement would affect Ohio and Wyoming clients who move to another State. Estimates indicate that one percent of a State agency's caseload moves to another State in a given year. Currently, Ohio converts to coupons approximately $92,000 in benefits a year. Wyoming converts approximately $4,000 in benefits a year.

Given the limited instances in which benefit conversion would be necessary, the Department is convinced that requiring each State agency to have a benefit conversion process in place is no longer justified. Therefore, the Department is making optional the requirement that State agencies be able to convert electronic benefits to paper coupons when a household relocates to a State that is not interoperable with the household's current State of residence. However, clients must still be able to use their remaining electronic benefits upon relocation.

State agencies that wish to rely on third party processor access when a client moves to another State will need to assist clients in finding a store where their out-of-State benefits can be used and, if necessary, work with other State EBT directors, store managers, or third party processors to get the State's IIN loaded into a store's IIN files or routing tables.

Since it is not yet technically feasible for EBT smartcards to be interoperable at this time, Ohio and Wyoming State agencies will need to continue converting benefits to coupons whenever a household moves to another State.

Funding Provisions

Pub. L. 106–171 provided one hundred percent Federal funding for the cost of switching and settling interstate food stamp transactions. The total amount of funding available annually is limited to $500,000. The $500,000 funding limit was based on a study of interoperability fees conducted by the National Automated Clearing House Association (NACHA). Four commenters opposed the funding limit stating that interoperability should be an obligation of the Federal government.

The Department does not have the discretion to change the amount of one hundred percent funding available for interoperability costs incurred by State agencies. Although only about half of all State agencies have requested interoperability funding to date, there is no indication that total interoperability costs will exceed the $500,000 limit given current pricing trends. In the event that interoperability costs do exceed the funding limit, State agencies will continue to be reimbursed at the fifty percent rate for the amount over the limit. Should such an instance occur, the Department expects the additional cost to individual State agencies to be nominal.

Other comments were raised regarding one hundred percent reimbursement for administrative fees related to interoperability that are passed onto State agencies. Public Law 106–171 (7 U.S.C. 2016(k)(6)A)) specifically states, ''the Secretary shall pay 100 percent of the costs incurred by a State agency under this Act for switching and settling interstate transactions * * *.'' Therefore, the legislation does not give the Department authority to provide one hundred percent Federal reimbursement for administrative costs related to interoperability. Accordingly, one hundred percent Federal funding for interoperability costs will continue to be limited to costs incurred specifically for switching and settling interstate food stamp transactions.

Two commenters expressed concern over the nature, amount and organization of billing information required to receive enhanced interoperability funding. The Department distributes to State agencies more detailed information on these requirements each fiscal year as part of the ''Request for Interoperability Funding, Administrative Procedures.'' This document includes specific procedures outside the regulatory process. We have worked closely with State agencies since the publication of the interim rule to make the request and payment process for interoperability funding as streamlined as possible within our regulatory constraints. As a result, we believe we have achieved a process that is agreeable to all parties involved and welcome continued input.

National Switch

We received three comments regarding FNS administration and control of a national switch (Gateway). Two commenters supported the development of a national switch while one commenter opposed it. In accordance with Pub. L. 106–171, the Department employed Phoenix Maximus to examine the feasibility of developing a Federal Gateway for handling interstate food stamp transactions. Although the report did not find technical barriers to having FNS support its own EBT transaction switch, it found that such an undertaking would not be cost effective. The Benton International Study of the interoperability costs of EBT transactions estimates that nationwide interoperability fees would amount to approximately $450,000 annually using private switches. In contrast, Phoenix Maximus estimates that the annual cost of operating a Federal EBT Gateway would be approximately $17 million. Another $2.2 million would be needed for initial implementation costs. Therefore, the Department is convinced that it would not be fiscally prudent to pursue the development of a Federal EBT Gateway at this time. As EBT expands across all States as the prevailing method for issuing food stamp benefits, we will continue to look into ways to make interoperability efficient and cost effective for all parties involved.

Disposition of Disputes, Error Resolution and Adjustments

Two commenters raised issues regarding the handling of disputes, error resolution, and adjustments across State lines. One commenter favored a specific reference to the Quest rules while the other commenter favored having FNS take the lead in facilitating standards for error resolution. The Department has chosen to define standards for error resolution within a separate rulemaking body. The EBT Benefit Adjustments Final Rule, published on July 5, 2000 at 65 FR 41321 specifically addresses the process for making retailers or clients whole when a system error occurs.

List of Subjects in 7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and record keeping requirements, State liabilities.

■ Accordingly, the interim rule amending 7 CFR parts 272 and 274 which was published at 65 FR 49719 on August 15, 2000, as amended by the final rule which was published at 65 FR 59105 on October 4, 2000 is adopted as a final rule with the following changes:

PART 274—ISSUANCE AND USE OF COUPONS

■ 1. The authority citation for 7 CFR Part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 274.12:

■ a. Paragraph (g)(6)(i) is amended by revising the second sentence; and

■ b. Paragraph (l)(6) is correctly reinstated.

The revision and reinstatement read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(g) * * *

(6) * * *

(i) * * * States must provide a means for a client to be able to use their benefits upon relocation. A State agency may convert electronic benefits to paper coupons if a household is relocating to a State that is not interoperable and where electronic benefits are not portable from the household's current State of residence, or assist clients in finding an authorized retail location where out-of-State electronic benefits can be used. * * *

* * * * *

(l) * * *

(6) State agencies may receive one hundred percent federal funding for the costs they incur for switching and settling all food stamp interstate transactions. For purposes of this section, the term ''switching'' means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term ''settling'' means movement, and reporting such movement, of funds from an EBT card issuer located in one to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to $500,000 nationwide. Once the $500,000 limitation is exceeded, federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. In order to qualify for this funding, the State agency must:

(i) Adhere to the standard of interoperability and portability adopted by a majority of State agencies for interoperability costs incurred for the period from February 11, 2000 through September 30, 2002;

(ii) Meet standards of interoperability and portability under paragraphs (e) and (h) of this section for costs incurred after September 30, 2002;

(iii) Sign and submit, in each fiscal year for which the State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the fiscal year in which costs are incurred in order to qualify for payment for that fiscal year, and

(iv) Submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter, when such requests for payments are scheduled to be processed.

* * * * *

Dated: June 17, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 03–15897 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407 and 457

RIN 0563–AB85

General Administrative Regulations, Subpart J—Appeal Procedure and Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations; the Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions to make

revisions mandated by the Federal Crop Insurance Act (Act), as amended by the Agricultural Risk Protection Act of 2000 (ARPA), and to require an earlier notice of loss for prevented planting in response to an Office of Inspector General Audit. The changes will apply for the 2004 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2005 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule. FCIC also made conforming amendments to the General Administrative Regulations, that provide the process for informal administrative review of determinations of good farming practices, to make the definition of ''good farming practices'' consistent with the definition contained in the Basic Provisions, and to consolidate all the provisions regarding the informal administrative review process for determinations of good farming practices in a separate section.

EFFECTIVE DATE: June 18, 2003.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Cost-Benefit Analysis, contact Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that changes in the rule will have positive potential benefits for insureds who do not engage in program abuse.

Changes in prevented planting provisions will be beneficial to two groups of producers. One group is made up of those who, under current provisions, would forgo the full prevented planting payment on a first crop in order to plant a second crop. Under the final rule, such producers will receive a reduced prevented planting payment to at least partially compensate for pre-planting costs incurred on the first crop. The second group is made up of producers who change planting decisions and plant a second crop that would not have been planted under current provisions. In taking this action, these individuals will reveal they perceive a positive economic benefit relative to the options offered them by current provisions. Whether payments and costs associated with prevented planting coverage increase or decrease and the magnitude of any such change will depend on the proportion of reduced prevented planting payments made under the final rule that are taken by producers who would have taken a full versus zero payment under current provisions.

Double insurance provisions of the final rule reduce the incentive for program abuse that is perceived to have occurred under current provisions. Earlier notice required from producers who are prevented from planting should also help reduce instances in which insurance providers cannot accurately determine whether insured causes resulted in the loss. Over time, if program abuse is decreased, premium reductions may result. Such reductions would be beneficial to producers who do not abuse the program. However, because the amount of abuse that currently occurs cannot be measured with existing data, immediate rate adjustments for reduction of program abuse are not appropriate. Rather, such adjustments should be made when adequate loss experience is available to support actuarial calculations that satisfy appropriate credibility standards.

Adding provisions to allow coverage for crops produced using an organic farming practice may encourage more producers using this practice to purchase insurance than in the past. Although it is not possible to determine the number of additional producers who may participate, the premium amount charged will be adequate to cover any additional losses and the amount provided to insurance providers for administrative and operating expenses will be as determined under the SRA.

Providing a reconsideration process for determinations regarding good farming practices will reduce costs incurred by insurance providers and insured producers. Prior to this rule, arbitration or judicial review were the mechanisms used to settle disputes regarding the use of good farming practices, and both are significantly more expensive than the reconsideration process that FCIC will perform. Although it is not possible to estimate the savings because the number of cases mediated or litigated in the past is not known, savings to insurance providers and insured producers will clearly result.

Changes to the provisions regarding yield substitution when actual yields fall below 60 percent of the applicable transitional yield should have little impact on overall program costs. It is anticipated that producers will continue to elect to substitute all low yields in a data base even though they are allowed to select individual years. Therefore this change should not affect program costs. Likewise, it is not anticipated many producers will elect to cancel the yield substitution election once they have it. Therefore, new provisions allowing cancellation of the election will have little impact on program costs.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through February 28, 2005.

The following comments were received regarding information collection burden: (1) A commenter stated FCIC estimates it will take producers, a loss adjuster, and an insurance agent an average of one hour to provide the requested information. The commenter believes this is incorrect for the producer, agent, company, and loss adjuster. It believes a more realistic estimate would be at least one hour for each individual listed above; and (2) Another commenter states that while the purpose of the proposed rule is to make changes and clarify existing policy provisions to better meet the needs of the insured and the insurance companies, it believes that the information FCIC collects for use in offering crop insurance coverage, determining program eligibility, establishing a production guarantee, calculating losses qualifying for a payment, and combating fraud, waste, and abuse will most likely result in a substantial increase in the number of burden hours to producers and insurance providers. In addition, it believes that it is critical the rule introduce greater clarity and common sense in the regulations that ultimately define contract terms for crop insurance polices as well as producers' responsibilities. The commenter believes it is imperative the rule be developed without imposing unnecessary, burdensome administrative requirements for crop insurance participants.

Based on the comments received, FCIC has increased the burden that FCIC estimates it will place on respondents for information collection for the entire crop insurance process to 1.1 hours per

respondent for a new estimated total of 1,447,152 hours for 1,310,553 respondents with 4,017,742 responses. The information collection burden is determined based on the average amount of time taken for all crops, all producers, all required and optional notices, etc. However, the large number of producers who do not provide loss notices and do not have claims significantly reduce the average information collection. FCIC strives to limit the information collection burden and implements only those changes required to properly administer the program and keep waste, fraud, and abuse to a minimum.

GPEA Compliance

RMA is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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, or 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

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

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. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, 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 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 September 18, 2002, FCIC published a notice of proposed rulemaking in the **Federal Register** at 67 FR 58912–58933 to amend the General Administrative Regulations, subpart T-Federal Crop Insurance Reform, Insurance Implementation, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations; Basic Provisions to implement program changes mandated by the Act, as amended by ARPA, and make other changes and clarify existing policy provisions to better meet the needs of the insured, effective for the 2003 and succeeding crop years for all crops with a contract change date of November 30, 2002, or later.

Following publication of the proposed rule on September 18, 2002, the public was afforded 30 days to submit written comments and opinions. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 67 FR 65732 on October 28, 2002, extending the initial 30-day comment period an additional 15 days, until November 12, 2002.

A total of 3,407 comments were received from 209 commenters. The commenters were reinsured companies, attorneys, trade organizations, commodity associations, State agricultural associations, regional agricultural associations, agents, insurance service organizations, universities, producers, USDA agencies, State Departments of Agriculture, grower associations, and other interested parties.

Significant comments were received regarding the provisions related to the implementation of ARPA. However, since these changes are statutorily mandated, FCIC has no choice but to implement these provisions as expeditiously as possible. The provisions mandated by ARPA include good farming practices and the reconsideration process, sustainable farming, organic farming, multiple benefits on the same acreage in the same crop year, prevented planting, yield substitutions, removal of references to limited coverage, and all the related provisions necessary to implement these provisions. Therefore, these changes and all related conforming changes are included in this final rule.

Further, an important program vulnerability was also raised by the Office of Inspector General (OIG) in an audit report related to the notice of loss for prevented planting acreage. Given the significance of this identified problem, FCIC has elected to also include the changes related to this vulnerability and any related conforming changes in this final rule.

A significant number of comments were received that raised issues that were not contemplated by FCIC when it proposed certain changes. These comments pertain to provisions that can generally be categorized as related to program integrity and administrative issues. Given the concerns expressed by the commenters, FCIC needs additional time to adequately consider such comments and take appropriate action. FCIC has determined that it does not have sufficient time to adequately address these comments prior to the contract change date for 2004 crop year fall planted crops.

To avoid delaying the implementation of provisions mandated by ARPA and OIG, FCIC has decided to separate those changes from the other proposed changes for which FCIC needs

additional time and move forward only with the ARPA and OIG changes in this final rule. FCIC has determined that it would impose an undue burden to implement those changes for which it needs additional time to respond to comments in the middle of a crop year. Further, it would also adversely affect those producers who plant both fall and spring planted crops to have different contract terms. All comments received on the proposed provisions that are not included in this final rule will be addressed in a subsequent final rule to be effective for the 2005 crop year.

The comments received that are related to the portions of the proposed rule addressed in this final rule and FCIC's responses are as follows:

Comment: A few commenters stated that the Basic Provisions must be clear and unambiguous, and that they also should be revised only in accordance with the best analysis available from the combined experience of program administrators, approved insurance providers and active agricultural producers. The commenters stated that any of the several inclusive processes permitted by law for the material revision of such a fundamental regulation would have been preferable to RMA's unilateral pronouncement. They complain that they have difficulty defending a policy that they did not help develop.

Response: Many of the changes that were originally proposed arose from discussions with the insurance companies, producer groups, OIG, the United States Attorney's offices, and other interested parties. However, to utilize the negotiated rulemaking process that the commenter proposes would drastically delay the process and hinder efforts to make meaningful and necessary program changes in a timely manner. The defense of the policy terms is dependent on the language of the policy, not the drafter. Through notice and comment, FCIC permits the insurance providers to have input into the specific language of the policy. Further, 7 CFR part 400, subpart X permits insurance providers and any other interested party to obtain an interpretation of policy provisions.

Comment: A commenter urged FCIC to not make any changes in the Basic Provisions at this time.

Response: The provisions related to ARPA must be implemented. However, as stated above, FCIC has received such significant comments on other provisions that it is taking the additional time needed to fully evaluate the comments and take appropriate action.

Comment: Many commenters requested an extension of the comment period.

Response: In response to such comments, FCIC extended the comment period an additional fifteen days.

Comment: Many commenters expressed concerns regarding implementation of the rule in the middle of a crop year. They also expressed concerns regarding the legality of making the rule effective upon filing with the **Federal Register**.

Response: As stated above, FCIC has elected not to implement the rule in the middle of the crop year. With respect to the effective date, FCIC will be in compliance with the applicable laws.

Comment: Many commenters noted that the amount of work required of the insurance companies delivering and servicing these policies will increase significantly from the amount of work currently required. It claims that if more is being required of the companies, they need to be compensated accordingly. Another commenter expressed concerns regarding the increased workloads and program delivery costs.

Response: FCIC agrees some additional work will be required to administer the new provisions contained in this final rule. However, most of these changes in this final are statutorily mandated so FCIC has no choice but to implement these provisions. Further, it is also anticipated that companies will realize significant savings as a result of the new limitations on multiple crop benefits on the same acreage, which may also reduce the work the insurance providers must currently devote to adjusting these claims. Further, Congress has placed a cap on the amount of money that insurance providers can receive to pay for their administrative costs. Therefore, FCIC does not have the authority to increase the compensation paid to the insurance providers.

Comment: Many general comments were received regarding added program complexity and unclear definitions, terms and conditions.

Response: Since no specific provisions were discussed, FCIC is unable to respond directly. However, FCIC did receive similar comments regarding specific provisions and has responded to those concerns below.

Comment: A few commenters requested their comments to the Common Crop Insurance Policy, Basic Provisions be considered for the Group Risk Plan (GRP) proposed provisions where applicable.

Response: FCIC has considered all the comments to the Common Crop Insurance Policy, Basic Provisions as if they are applicable to the GRP provisions. Where applicable, in response to the comments, FCIC has made the same or similar changes in both the GRP provisions and the Basic Provisions.

Comment: A commenter stated the ''first,'' ''second'' and ''double'' crop provisions contained in ARPA should not apply to the GRP policy. It stated that National Agricultural Statistics Service (NASS) records are based on their own criteria, and are consistent from year to year in methodology. The commenter added that, from an administrative standpoint, including this language in the GRP policy removes much of the administrative ease that has been associated with GRP and that administrative ease has been one of GRP's biggest selling points to many insureds.

Response: Section 108 of ARPA does not make any distinction between plans of insurance. It simply requires that any loss for a first crop insured under the Act be reduced by 65 percent if a second crop is planted on the same acreage in the same crop year and suffers an insurable loss. Since ARPA does not provide an exception for GRP policies, no change has been made.

Comment: A few commenters stated beyond the definition itself, all references to ''good farming practices'' in the GRP policy need to reflect the provisions of section 123 of ARPA. For instance, in § 407.9, section (3)(c)(2), the statement is made that insurance will not be available if good farming practices are not followed, with the unqualified warning that if ''any farming practice is not established or widely used in the area, it may not be considered a good farming practice.'' In this instance, there is not even an attempt to reflect the ARPA provision in question. This sentence is clearly deficient and at odds with the statute and must be changed to comply with section 123 of ARPA.

Response: Since the definition of ''good farming practices'' in the GRP policy specifically references both sustainable and organic farming practices as ''good farming practices,'' it is not necessary to repeat these terms wherever ''good farming practices'' is used in this rule. FCIC agrees the reference to ''widely used'' should be removed and has revised section 3(c)(2) accordingly. A similar reference has also been removed from the definition of ''good farming practices.'' These references were removed because ''common usage'' is not a useful measure to determine whether a practice is acceptable. The more accurate measure is whether the

practice is generally recognized as agronomically sound since generally recognized is a judicially determined objective standard.

Comment: A few commenters asked if it is intended that organic crops will be insurable under the GRP policy. If so, the commenter questioned whether they will be referred to as ''organic,'' or simply fall under the generic heading of that crop. The commenters states that if they will not receive ''special'' or distinct treatment under GRP, there is no need for separate references to ''organic'' in the GRP policy. The commenters also stated the definition of ''good farming practices'' should be the same in the GRP policy and the Basic Provisions. The commenters also asked that the Corporation include the regulatory sections in 7 CFR part 400, subpart J if it extends or re-opens the comment period on the crop insurance rules.

Response: Although organic farming practices will be insured under the GRP policy, the organic crop will be insured using the same NASS yield and expected market price as all other crop practices. Therefore, organic crops are not insured separately from any other type of the same crop. The definitions of ''good farming practices'' have been made consistent to the extent possible in both the GRP policy and the Basic Provisions. The only differences are due to the fact that GRP is not a production based policy. At the time that the comment period for the proposed rule was extended, FCIC did not know that there was an issue regarding the reconsideration process published in 7 CFR part 400, subpart J. However, now that FCIC has considered all the comments, it realizes that amendments are required to subpart J as stated below. Since changes to subpart J were made only in response to comments received, an additional comment period was not required.

Comment: Several commenters recommended adding a definition of ''actual production history (APH).'' Some of the comments suggested the definition cross reference 7 CFR part 400, subpart G.

Response: FCIC agrees with the comments and has added a definition of ''actual production history (APH).''

Comment: Several commenters recommended adding the definition of ''area.'' Some of these commenters stated a definition is warranted because it is possible to interpret ''area'' to be surrounding townships, sections, etc., and the term could mean something different depending on the region of the country where the crop is grown. Another commenter stated that a definition is needed since the term ''area'' is used throughout the policy. Another commenter stated it is not clear who determines the area. An additional commenter stated the use of the term ''area'' should be consistent throughout the policy. One commenter recommended the definition take into consideration a three-mile perimeter from the unit and consider the soil, climate, water, and topographic conditions and other circumstances substantially similar to those in the unit.

Response: FCIC agrees the term ''area'' should be defined. A definition has been added for ''area,'' which encompasses all usages of the term in the policy. The insurance provider is responsible to determine the area in accordance with the definition. The definition of ''area'' cannot be limited to a certain size because many usages of the term require that the area have same characteristics, which may not fit within the suggested size.

Comment: A commenter recommended adding the definition of ''average yield.'' A commenter stated the definition of ''average yield'' is verbatim with the definition of ''approved yield,'' although as used in the program the two terms have very different meanings. The commenter recommended revising the definition of ''average yield'' and to consistently use each term in a manner consistent with its respective definition. Several commenters recommended revising the definition of ''average yield'' by changing ''* * * including any adjustments * * *'' to ''* * * prior to any adjustments * * *'' and/or including a reference to the average yield as the ''preliminary'' APH yield, as used in the Crop Insurance Handbook (''CIH''). A commenter recommended reconsidering the reference to section 36 in the definition of ''average yield'' since ''average yield'' is used in rate calculations for yield floors as well.

Response: The definition of ''average yield'' was included in the proposed rule. FCIC agrees the definition of ''average yield'' should not be the same as the definition of ''approved yield.'' The definitions of ''average yield'' and ''approved yield'' have been revised in this final rule such that the approved yield is the yield after it has been adjusted in accordance with the policy provisions. The average yield is the yield prior to any such adjustments. A reference to ''preliminary APH yield'' is not included in the final rule because it is not used in the policy. If the term is used in the CIH, it should be defined there. FCIC agrees the reference to section 36 does not include all adjustments that may be made prior to calculating approved APH yields and has revised the definition of ''average yield'' to include other adjustments.

Comment: Several commenters indicated buffer zones cannot prevent drift and unintended contact, and, at best, can only minimize contamination. Some of the commenters recommended revising the definition of ''buffer zone'' by replacing the words ''prevent the possibility'' with ''minimize the possibility.'' Other commenters recommended FCIC accept any buffer zone approved by an organic farm's accredited certifier, used in any certified organic operation, or included in an organic plan.

Response: FCIC agrees buffer zones cannot always prevent contamination of organic acreage and has replaced the word ''prevent'' with the word ''minimize'' in the definition of buffer zone. FCIC agrees that buffer zones should be those included in the organic plan that have been approved in writing by an accredited certifier. However, FCIC cannot accept buffer zones that are used in any certified organic operation, unless such buffer has been approved by the certifying agent, to avoid any conflicts within the policy. FCIC has clarified the definition accordingly.

Comment: A commenter asked how a company, agent or adjuster will know if the certifying agent is ''accredited by the Secretary.''

Response: The company, agent or loss adjuster can determine whether a certifying agent is accredited by the Secretary by accessing the list of accredited certifying agents on the National Organic Program Web site at *http://www.ams.usda.gov/nop/CertifyingAgents/Accredited.html.*

Comment: A few commenters recommended defining ''commonly used.''

Response: The phrase ''commonly used'' has been removed from this rule, including the proposed definition of ''good farming practices,'' because FCIC has determined that it is not a useful measure to determine whether a practice is or is not acceptable in an area. The more accurate measure is whether the practice used is generally recognized as agronomically sound since generally recognized is a judicially determined objective standard.

Comments: Many comments were received regarding the definition of ''cover crop.'' The comments are as follows: (1) Several commenters recommended revising the definition to indicate the effect on coverage of haying, grazing or otherwise harvesting the cover crop. The commenters stated it is important to clarify commercial use of a cover crop can affect coverage for other crops on the same acreage; (2) A

few commenters stated the definition should be consistent with the definitions of ''first crop'' and ''second crop.'' One commenter asked if the reader should be referred to the definition of ''second crop;'' (3) Several commenters recommended revising the definition to exclude acreage eventually used for haying or grazing, intended for harvest. Other commenters thought it would be helpful to clarify ''left in place'' means not haying, grazing or harvesting; (4) A commenter suggested adding ''as defined by FCIC'' to the proposed definition; (5) Several commenters stated the definition of ''cover crop'' is too restrictive and inaccurate because it requires widespread or common usage before innovative alternative practices are recognized. A few of the commenters recommended replacing ''commonly used in the area'' with ''agronomically appropriate to;'' (6) A few commenters recommended adding purposes for cover crops such as enhancing soil health and nutrient availability, controlling weeds and pests, reducing fertilizer and pesticide costs, conserving water moisture, and protecting water quality; (7) A few commenters suggested deleting the proposed language indicating cover crops are generally left in place for an entire growing season. Some of the commenters stated producers will plant more than one cover crop on the same ground at different points during the same growing season, and cover crops often bridge two growing seasons; (8) A commenter recommended using the following definition: ''A crop or a succession of crops that are agronomically appropriate which are planted for green manure, erosion control, to enhance soil health and nutrient availability, control weeds and pests, reduce fertilizer and pesticide costs, conserve water moisture, and protect water quality. The crop is generally left in place for a portion of the growing season, an entire growing season, or bridging two growing seasons;'' (9) A few commenters stated using the phrase ''generally left in place'' causes the definition of ''cover crop'' to be unclear and creates ambiguity. Some other commenters recommended deleting ''generally left in place for one growing season;'' (10) A few commenters asked if grain planted for wildlife qualifies as a cover crop;'' (11) A commenter asked if ''left in place'' meant it cannot be hayed or grazed; (12) A commenter recommended defining ''green manure;'' (13) A commenter suggested inserting ''surrounding'' before ''area'' in the definition of ''cover crop;'' (14) A commenter stated it is unclear what constitutes or qualifies as a cover crop; and (15) A commenter stated a cover crop could be commonly planted but not meet the requirements in the Prevented Planting Loss Adjustment Manual, and the definition should be more crop specific.

Response: FCIC does not agree the definition should include the insurance coverage impacts of haying, grazing or otherwise harvesting a cover crop. Those provisions are more appropriately included in sections 15 and 17, which state the impact on insurance if a cover crop is hayed, grazed or otherwise harvested. Therefore, no change has been made in response to this recommendation. FCIC has revised the definition of ''second crop'' to include cover crops. FCIC agrees the definition of ''cover crop'' should refer to the definition of ''second crop'' and has revised the definition accordingly. FCIC does not believe excluding hayed or grazed acreage from being a cover crop in the definition is as clear as stating the consequences of haying or grazing the cover crop in sections 15 and 17. Therefore, the recommended change has not been made. Use of the phrase ''as defined by FCIC'' in a definition only creates ambiguity because FCIC can only define terms in the definitions. Therefore, no change has been made in response to this recommendation. As stated above, FCIC has removed all references to ''commonly used'' and instead replaced it with the requirement that the cover crop be generally recognized by agricultural experts as agronomically sound for the area. FCIC agrees to add a definition of the term ''generally recognized.'' ''Left in place'' in the proposed provision did not mean it could not be hayed or grazed. In the proposed definition, it was intended to mean the crop would remain on the acreage for one growing season. However, FCIC agrees with comments recommending deletion of provisions indicating cover crops are generally left in place for one growing season and has removed this provision. FCIC has not accepted the recommended definition of ''cover crop'' because it is too restrictive to list the possible uses. FCIC agrees there are many uses for cover crops and has elected to remove the specific uses, other than the most common which is erosion control, and instead has referenced the purpose of cover crops as being related to conservation or soil improvement. However, FCIC has adopted a similar standard of agronomic soundness in its definition. A crop planted for wildlife use may qualify as a cover crop if it complies with the definition of ''cover crop.'' Since FCIC has removed the specific uses from the definition, the term ''green manure'' no longer needs to be defined. FCIC has defined the term ''area.'' Therefore, there is no need to include the term ''surrounding.'' With respect to what qualifies as a cover crop, provided that the crop meets the definition, it will be considered a cover crop. FCIC has revised the definition to improve clarity and all procedures will be revised to be consistent with such definition.

Comment: A few comments were received regarding the definition of ''double crop.'' The comments are as follows: (1) A commenter recommended amending the definition of ''double-crop'' by stating ''two or more different crops;'' (2) A commenter recommended replacing ''practice'' with ''cultural agronomic practice;'' (3) A commenter recommended clarifying that the words ''the practice of * * *'' means it is routinely done by the grower, not just one time; and (4) A commenter recommended including, in the definition of ''double-crop'' information about a third crop on the same acreage if two crops have already been planted in the same year, even if either or both crops fail.

Response: Although not common, double cropping requirements could be met with multiple plantings of the same crop, such as tomatoes or other vegetable crops that have multiple planting periods and harvests in the same crop year. No changes have been made in response to this comment. To eliminate any ambiguity caused by the different uses of the term ''practice,'' it has been removed from the definition. It is not necessary for the definition to require routine performance of double cropping because the provisions in sections 15 and 17 specify the producer must have double cropped acreage in at least two of the last four crop years in which the first crop was planted or grown on it. No changes have been made in response to this comment. Since the provisions in section 9 specify how crops planted following a second crop will be handled, it is not necessary to include such a provision here. No changes have been made in response to this comment.

Comment: Several comments were received regarding the proposed definition of ''first crop.'' The comments are as follows: (1) A few commenters recommended defining ''first insured crop'' rather than ''first crop;'' (2) A commenter stated it is irrelevant if the first crop is insured or not; (3) A commenter stated, for the purposes of prevented planting, it should not be

necessary for the ''first crop'' to be insured and the term should be consistent with the definitions of ''cover crop'' and ''second crop;'' (4) A few commenters recommended separate definitions for ''first crop'' and ''first insured crop'' and a review of the provisions in which the terms are used; (5) A few commenters are concerned about situations in which a first crop is planted and not insured; (6) A few commenters are concerned about making the assumption that ''first crop'' and ''crop'' are to be interpreted differently, and that there will be confusion when dealing with double-cropping or following another crop and not following another crop practices for crops such as soybeans. One of these commenters was also concerned about the extra work and confusion generated due to the necessity of explaining potential outcomes to insureds of planting a second crop and of insureds making decisions to insure only some acreage of a crop; (7) A commenter recommended revising the definition of ''first crop'' as follows: ''The first agricultural commodity planted on any specific acreage that would reach maturity in the current crop year;'' and (8) A commenter stated the example in the definition of ''first crop'' fails to address short-rated wheat.

Response: For the reasons stated below, FCIC agrees with the commenters that using the term ''first insured crop'' would be less confusing to administer than the term ''first crop'' and it has revised its definitions and other provisions accordingly. Section 108 of ARPA clearly requires that to qualify as the first crop, the crop must be insured. As stated above, FCIC has made the definitions of ''first insured crop,'' ''second crop'' and ''cover crop'' consistent with one another. If a first crop is planted and not insured, it is not considered a first crop and the subsequently planted crop, if insured, would be the first crop. FCIC cannot accept the recommended definition of ''first crop'' since the requirements for a first crop are specifically stated in section 108 of ARPA, which includes the requirement that the first crop be planted for harvest in the crop year, not just reach maturity in the crop year, which is reflected in the proposed definition. The definition only requires that the crop be insured and planted for harvest, not actually harvested. Since short rated wheat is planted for harvest, it would qualify as a first crop.

Comment: Several commenters recommended separating fall and spring crops when defining ''first crop.'' The commenters did not think that the intent of ARPA was to discourage coverage of multiple crops in different crop seasons, and instead think the intent is to limit multiple crops within the same crop season, and recommended revising the definition of ''first crop'' to include the crop season. The commenters further stated the first spring seeded crop should be the ''first crop'' even though an insurable fall-seeded crop was planted on the same acreage.

Response: FCIC disagrees with the commenters. The provisions of ARPA do not distinguish between fall and spring season crops. The definitions of first and second crops contained in ARPA specifically reference the crop year rather than crop season. Since fall and spring crops are planted for harvest in the same crop year, they cannot both be considered as first crops. Therefore, no change has been made.

Comment: There were a large number of comments regarding the definition of ''good farming practices'' and for the purposes of addressing these comments, FCIC has grouped them into four following categories: (a) reasons the definition is generally inadequate; (b) statements and questions regarding the definition; (c) recommended replacement definitions; and (d) concerns regarding organic and sustainable farming practices.

(a) Many commenters stated the definition of ''good farming practices'' is inadequate for the following reasons: (1) It fails to establish a standard which is objective, consistent or ascertainable; (2) It is confusing, poorly worded, and may open up ''good farming practices'' to include virtually anything due to the language included in the last sentence; (3) There is no objective standard because it is whatever FCIC says it is; (4) Producers nor insurance providers will be able to determine whether FCIC has recognized a particular practice to be necessary, and certainly not on a timely basis; (5) It instructs the producer to ''contact'' the company ''to determine if such practice is insurable'' but does not tell how the company is to establish whether FCIC recognizes a particular practice as necessary; (6) It lacks recognition of the thousands of permutations of seed, seeding rate, row spacing, tillage practices, fertilization, irrigation, chemical application, herbicide application, harvesting procedures, and the timing of each that are currently loosely defined as ''good farming practices;'' (7) The word ''should'' used in a statutory or contractual context always invites problems (the commenter stated ''should'' denotes an aspirational goal and aspirational goals are for preambles and political speeches, not contractual or statutory terms; (8) Use of the words ''area,'' ''commonly,'' and ''widely'' (also used in sections 3 and 8) creates ambiguity; (9) It does not address whether a common practice is an insurable practice, *e.g.,* it is a ''common'' practice in Iowa and Missouri to plant Roundup-ready seed into established grass, then burn it down; however, this is not an insurable practice; (10) Inclusion of ''agronomic and weather conditions in the area'' implies a temporal dimension that may invalidate certain practices that would normally be considered good; (11) The term ''farming practice'' is not defined; (12) It is unclear who makes the determination of good farming practices (FCIC, NRCS, and private insurers are all referenced or cross-referenced in the definition); (13) It infers that only sustainable conventional practices are recognized as being good farming practices; and (14) Farmers will miss planting windows because FCIC will not be able to provide determinations quickly when they are needed. One of these commenters asked what was meant by ''recognized.''

Response: FCIC agrees that the definition of ''good farming practices'' should have an ascertainable standard and has revised the definition to include production methods generally recognized by the agricultural experts for the area. Further, as stated above FCIC has added a definition of ''generally recognized'' to add objectivity to the definition. FCIC agrees it is not reasonable to expect FCIC to know all good farming practices for all crops. The definition has also been revised to indicate the insurance provider will continue to make the determination of whether the production method is a good farming practice and FCIC will only assist in making such determinations if asked. If asked, FCIC will consult with agricultural experts familiar with a specific area for assistance in determining good farming practices in these cases. FCIC will also provide procedures informing insurance providers or insureds where to send requests for a determination of good farming practices. FCIC agrees with the commenter regarding the term ''should'' and for this and other reasons stated above, FCIC has removed the entire sentence from the definition. FCIC has defined the term ''area'' for the purposes of clarity and has removed the references to ''commonly'' and ''widely.'' FCIC does not agree the definition should address whether or not a farming practice is insurable. Insurable practices are designated in

other parts of the policy. FCIC does not agree with the comment regarding temporal and agronomic conditions. Climatic and agronomic conditions such as soil type and annual rainfall are not temporal. Further, even localized weather conditions should be considered in determining whether a production method is a good farming practice because they have an impact on the growth of the crop. References to weather and agronomic conditions have been removed from the definition of ''good farming practices'' and placed in the definition of ''area.'' FCIC agrees what constitutes ''farming practices'' should be included in the definition and has revised the definition to explain they are productions methods utilized to produce the insured crop. The comment regarding the inference that only sustainable conventional practices are recognized as good farming practices has been clarified to distinguish between conventional, sustainable, and organic agricultural practices. Since insurance providers will be making these determinations, the timing should be no different than under the previous definition under most circumstances.

Comment: Many commenters had the following statements and questions regarding the definition of ''good farming practices:'' (1) Substituting FCIC and NRCS as arbiters in place of Extension does little to rectify the problem, and they recommend greater clarity about how good farming practice decisions will be made and by whom, and how they will be communicated to all parties; (2) Recommend clarifying what ''recognized by FCIC'' means; (3) The definition of ''good farming practices'' does not include the ''common usage'' test, but looks for practices that are compatible with the agronomic and weather conditions in the area—it is too vague to be meaningful to producers; (4) The definition misapprehends the role of accrediting agencies under the National Organic Program because they do not ''recommend'' farming practices; (5) The most effective means of enhancing the integrity of the Federal crop insurance program and reducing producer fraud and abuse would be to establish a totally objective ''good farming practices'' standard, and one that can be ascertained very quickly in all circumstances; (6) A question was asked regarding whether FCIC is changing what practices are insurable with the new definition; (7) A listing of ''good farming practices'' is necessary and producers must know where to find the listing since the insured has the right to know which practices are recognized by FCIC; (8) A question was asked whether FCIC will publish a listing of ''good farming practices'' and will the information be contained in the Special Provisions; (9) It will be a huge task to list the thousands of good farming practices and there is no provision for producers to request an appeal if a certain practice is not listed; (10) The reference to ''produce at least the yield used to determine the production guarantee'' may cause confusion in replant situations since planting after the final planting date results in yield reductions; (11) It is necessary to establish a procedure for quick turn around time for the many questions companies will receive from policyholders; (12) A question was asked what process will be used to obtain approval of a farming practice from FCIC and is it the obligation of the insured, as opposed to the insurance provider, to obtain a decision; (13) A question was asked how will the insured and insurance provider know, in advance, what FCIC considers to be good farming practices for a given county; (14) It is necessary for producers to know, up front, which practices FCIC will accept and it is necessary for FCIC to publish something by crop, state and county by a certain date; (15) FCIC should not have the ability to second-guess after the fact, rather its determinations must be made known up front at the same time growers are faced with the situations that cause disputes; (16) Add a review process for ''good farming practices'' determinations that requires the producer to be given an opportunity to review and respond to the evidence available to or considered by the agency staff person who made the original adverse determination; (17) FCIC does not have sufficient knowledge to know what sustainable and organic practices should be considered good farming practices; (18) FCIC failed to capture the intent of Congress to reduce discrimination against producers using sustainable and organic farming practices;'' and (19) ''Common usage'' is a poor proxy for ''scientific soundness,'' the criteria set by Congress and indicated reference to common usage recurs throughout the rule, including §§ 407.9(3)(c)(2) and 457.8(b)(2).

Response: FCIC has revised the provision and now the insurance providers will be making the determinations based on what agricultural experts determine are generally recognized production methods. FCIC has clarified that it will only make such determinations if asked to do so. FCIC has deleted the reference to ''recognized by FCIC'' so no clarification is needed. FCIC has clarified the provisions by using weather, agronomic and other conditions to define the area. With respect to good farming practices, FCIC has clarified that the key is whether the crop will make normal progress toward maturity and produce the specified yield. Such determinations are made by agricultural experts based on generally recognized production methods. FCIC agrees that the accrediting agency may not recommend farming practices. However, in the organic plan, the accrediting agency must approve the production methods to be used by the producer. FCIC has revised the definition to add objectivity and allow determinations to be made as expeditiously as possible. FCIC has not changed the practices that are insurable with the new definition. It has simply clarified what constitutes a good farming practice. Insurable practices are designated in other parts of the policy. Since FCIC will no longer be making the determinations of good farming practices, it does not intend to develop or provide a listing of good farming practices. As pointed out by commenters, the large number of farming practices in use would make such a list extremely difficult, if not impossible to produce and maintain. Determinations must be made on a case by case basis based on individual farming operations. FCIC has revised the definition to account for late planted acreage. Since insurance providers will be making the determinations, the turn around time should be no different than under the current provisions. Since the definition has been revised, comments regarding decisions made by FCIC are no longer applicable for a majority of the producers. FCIC intends to issue procedures for those situations where FCIC is asked to render a determination. The reconsideration process requires FCIC to review any initial determination made by the insurance provider if it is disputed by the producer. However, initial determinations will be made by the insurance provider and can be made up front at the request of the producer. In the reconsideration process, the producer will have an opportunity to review and respond to the information upon which the initial determination of good farming practices has been made. Decisions made by FCIC in the reconsideration process will not be subject to further administrative appeal. FCIC agrees neither it nor the insurance providers have all the knowledge necessary to determine good sustainable or organic farming practices and,

therefore, has deferred such determinations to agricultural experts who do have the knowledge to determine good farming practices. FCIC does not believe the definition contained in this final rule discriminates against any producer. The definition allows sustainable practices to include those generally recognized by the agricultural experts and good organic farming practices to include those generally recognized by the organic agricultural industry, or contained in the organic plan. Further, since the expectation is that crops produced under a sustainable practice will produce the same yields as a crop produced under a conventional practice, the definition should not discriminate between these practices. In response to previous comments, the term ''common usage'' has been removed from the definition.

Comment: Commenters recommended replacing the proposed definition of ''good farming practices'' with the following: (1) ''Farming practices, including sustainable farming practices, generally recognized and used by agricultural producers in soil, climate, water, topographic and other circumstances substantially similar to yours to assure the insured crop makes normal progress toward maturity and produces at least the yield used to determine the production guarantee or amount of insurance.'' The commenter stated ''Generally recognized'' is a phrase venerated in accounting, engineering, legal and other contexts, and which has been widely interpreted by courts to mean just what it says; in this proposed definition, ''good farming practices'' would be what good farmers do, an objective and ascertainable standard, not what academics theorize or the Agency decrees; (2) ''Those farming practices recognized and required by RMA for the crop to be insured. Good farming practices are those necessary to enable the crop to make normal progress toward maturity and produce at least the guaranteed insurable yield. For crops that have not previously been insured or insurable under the Act, RMA will determine guidelines for acceptable good farming practices for each crop in each area and post that information on the RMA Web site. Otherwise, acceptable good farming practices are those farming practices commonly used in the area, compatible with the agronomic and weather conditions in the area, and that have proven to successfully produce at least the guaranteed insurable yield of the particular crop in the area. It is your responsibility to find out what the good farming practices for your crop in your area are and to follow those practices in order to produce an insurable crop. We suggest you contact your nearest Cooperative State Research, Education, and Extension Service (CSREES) office to obtain this information and recommendations for growing your crop. You should contact us if you have any questions regarding good farming practices, especially if you intend to use a farming practice not commonly used in the area or that differs from the recommendations obtained from CSREES;'' and (3) ''Farming practices used by the majority of growers in the county and proven to be sufficient to establish the crop and produce a yield equal to at least the yield used to establish your guarantee.''

Response: FCIC agrees in principle with the comment recommending good farming practices being generally recognized in the area. However, such a determination should be made by agricultural experts and FCIC has revised the final definition accordingly. FCIC has also improved the definition of ''good farming practices'' by adding a definition for ''area'' and ''generally recognized,'' clarifying the late planting issues, and that it is insurance providers that make determinations and FCIC will only make a determination if asked. The recommendation that would have required FCIC to recognize all good farming practices, post information on the website regarding determination of good farming practices for new crops, and otherwise provides for a ''common usage'' test, is cumbersome and does not eliminate deficiencies noted by other commenters. The recommendation requiring a majority of producers in the county to use the practice would be difficult to administer, does not address concerns regarding sustainable or organic practices, and also does not eliminate deficiencies noted in the comments received.

Comment: Commenters recommended revising the definition of ''good farming practices'' to: (1) Distinguish between sustainable and organic farming practices and address both in each reference to good farming practices; (2) Clearly place sustainable and organic practices on an equal footing with conventional practices; (3) Include a statement of non-discrimination against sustainable and organic practices and systems; (4) Not require sustainable or organic farming systems to be commonly in use in a given geographic area in order for producers using those systems to be eligible; (5) Make the definition in the Basic Provisions consistent with that in the GRP by including references to organic farming practices, and to add ''* * * organic farming practices will be considered to be good farming practices if they are those specified in the organic plan,'' (found in section 37 of the proposed Basic Provisions) to the definition in both policies; (6) Remove any suggestion the burden of proof lies with the producer or that private insurers will be the final arbiters of what constitutes good farming practices; (7) Replace ''area'' with ''county;'' (8) State farming practices not commonly used in the area would not be insurable unless approved by written agreement; and (9) Include organic systems in the definition of ''good farming practices'' by adding ''For crops grown under an organic practice, the farming practices included in an approved organic farm plan and those practices approved by a private organization or government agency that certifies organic products in accordance with 7 CFR part 205 and is accredited in accordance with the requirements of the National Organic Food Production Act of 1990. Commenters suggested this addition would include those who have the knowledge and expertise necessary to make experience based determinations, and that FCIC, NRCS, and private insurers have an insufficient knowledge base and training to make appropriate determinations.

Response: FCIC agrees the definition should distinguish between sustainable and organic farming practices and has revised the definition accordingly. Further, the definition has been revised to treat sustainable, organic, and conventional practices equally. In response to previous comments, the term ''common usage'' has been removed from the definition. The definitions in the Group Risk Policy and in the Basic Provisions have been made consistent in this final rule to the extent possible and since reference to organic farming practices has been added to the definition, FCIC has removed the proposed section 37(f). The producer is required to be in compliance with the policy terms. The insurance provider is supposed to verify that such compliance has occurred, which includes a determination of whether good farming practices have been followed, and ultimately FCIC will make the determination of good farming practices in the reconsideration process. The term ''area'' has been retained in the definition and has been defined. The term ''county'' was considered but not used because it is too restrictive in many instances because the area is defined by characteristics of the acreage, not a political subdivision. Requiring

the use of written agreements would be discriminatory against producers who use good farming practices that are not commonly used in the area, such as some sustainable practices. Therefore, this change has not been made. FCIC has revised the definition of ''good farming practices'' to include similar language to the recommended language regarding organic farming.

Comment: Several commenters stated the definition of ''prohibited substance'' is incomplete because it does not specify what list will be used to determine ''prohibited substances.'' The commenters recommended clarifying if the listing of prohibited synthetic substances and the list of acceptable natural substances attached to the National Organic Program (NOP) will be used or if other lists will be used. Some commenters recommended clarifying that the list of prohibited synthetic substances and the list of acceptable natural substances of the NOP are the lists to be used.

Response: FCIC has revised the definition to include a reference to the lists of prohibited and acceptable substances published at 7 CFR part 205.

Comment: A commenter asked what the difference is between ''certified organic,'' ''organic'' and ''transitional organic'' acreage, and recommended either defining ''organic acreage'' or removing it from the definition of ''prohibited substance.''

Response: The proposed provisions define ''certified organic acreage'' and ''transitional acreage.'' The term ''transitional organic acreage'' is not used nor defined in the provisions. The difference between transitional acreage and certified organic acreage is that transitional acreage may have organic practices used but it has not met the requirements to be considered certified organic acreage by the certifying agent. FCIC agrees with the commenter that reference to ''organic acreage'' should be removed from the definition of ''prohibited substance'' because the term ''organic acreage'' could be misleading and is not defined or used elsewhere in the provisions. Therefore, FCIC has revised the definition of ''prohibited substance'' to remove the reference to ''organic acreage.''

Comment: Several comments were received regarding the proposed definition of ''second crop.'' The comments are as follows: (1) A commenter suggested the defined term state the significance of summer fallow and continuous cropping practices; (2) A commenter stated the concluding sentence should be eliminated because a cover crop planted after a first crop should not be considered a second crop when it is hayed, grazed or otherwise harvested; (3) A commenter stated the definition needs to be made consistent with the definition of ''cover crop'' and ''first crop;'' (4) Several commenters stated the word ''immediately'' in the first sentence should be deleted as it suggests a specific time to plant the second crop and is ambiguous; (5) Another commenter recommended defining the term ''immediately;'' (6) A commenter suggested clarifying multiple crops on the same acreage are approved provided the actuarial table allows for more than one crop on the same acreage in the same year; (7) Several commenters stated the policy does not take into account an initial crop that is not insured removes moisture and nutrients from the soil, which increases the yield risk of any following crop; (8) A few commenters stated the phrase ''hayed, grazed, or otherwise harvested'' should be used to be consistent with other areas in the policy; (9) A few commenters stated the definition encroaches on the definition of ''cover crop'' by implying a cover crop can be hayed, grazed or harvested (not remain ''in place''); (10) A commenter stated ''will be'' is an errant change in tense; (11) A commenter suggested clarifying how a second crop can be the same crop as a first crop and if the second crop has to be insured or not; (12) A few commenters stated the definitions would allow two uninsured crops and then a ''first crop'' which might not meet the requirements of the definition of ''good farming practice;'' (13) A commenter suggested clarifying how crops with multiple planting periods will be handled; and (14) A commenter stated the definition may not be clear to a layman.

Response: FCIC does not agree it is necessary to state the significance of summerfallow or continuous cropping practices in the definition of ''second crop.'' Section 108 of ARPA does not make any distinction with respect to the farming practice used. All that is material is whether the second crop was planted for harvest. For the purpose of section 108 of ARPA, FCIC has determined that harvest is the removal of crop from the acreage by any means. Since haying and grazing removes the crop from the acreage, it is considered harvested. However, FCIC has clarified that for the purpose of determining the end of the insurance period, harvest of the crop will be as defined in the Crop Provisions, not as determined in the definition of ''second crop.'' FCIC has revised these definitions to ensure that they are not in conflict with one another. FCIC agrees the word ''immediately'' could be misinterpreted and has replaced it with the ''next occurrence of planting.'' Since the second crop is not required to be insured, there should be no reference to its insurability. Section 108 of ARPA does not consider the effect of the first crop on the acreage in determining whether the next crop planted is considered a second crop. As stated above, if the initial crop planted is not insured, it is not a first crop. If the initial crop is insured, the only determinant is whether the next crop was planted for harvest. However, removal of moisture and nutrients from the soil by the first crop or any previously planted uninsured crop, or whether the producer used good farming practices must still be considered in determining whether the crop is insurable. There are several provisions that limit insurance on multiple crops and, if planting multiple crops on the same acreage is considered to be a poor farming practice, then no insurance would be provided for any crop that is planted using a poor farming practice. FCIC has revised the provisions to consistently use the phrase ''hayed, grazed or otherwise harvested'' throughout the Basic Provisions. However, the definition has been revised to make it clear that for the purposes of determining the end of the insurance period, the definition of ''harvest'' in the Crop Provisions controls. As stated above, FCIC has revised the definitions of ''second crop'' and ''cover crop'' to ensure that they are consistent with each other. However, a producer may still elect to hay, graze or otherwise harvest a cover crop. The definition of second crop is intended to provide the conditions under which a cover crop will be considered to be a second crop. The definition has been revised to make it clearer that planting of the same crop twice on the same acreage in the same crop year may be considered as both a first and second crop if replanting is not required by the policy. FCIC agrees the definition should be modified to indicate the second crop does not have to be insured to be considered a second crop and has modified the definition accordingly. The revisions made in response to the comments clarify the definition. Crops with multiple planting periods may qualify as first and second crops and will be administered accordingly. For example, if a crop is planted in one planting period and the same acreage is subsequently planted to the same crop in the next planting period, and replanting is not required under the policy, the first and second crop

provisions of the policy would be applicable.

Comment: Several commenters stated that if the term ''Secretary'' is used only in the definition of ''certifying agent'' it might be better to refer to the ''Secretary of Agriculture'' in that definition rather than adding a new definition.

Response: FCIC agrees with the commenters and has deleted the definition of ''Secretary'' and amended the definition of ''certifying agent'' as suggested.

Comment: Commenters stated the following regarding the definition of ''sustainable farming practice:'' (1) The proposed definition is narrow and makes ''sustainable farming practice'' synonymous with conservation practice standards in the local NRCS Field Office Technical Guide; (2) Merely cross referencing another agency's criteria for conservation practices without some critical analysis to determine the adequacy of those standards for crop insurance purposes is insufficient and a more accurate definition is needed; (3) The definition should, at the very least, reflect the existing statutory definition of sustainable agriculture (7 U.S.C. 3103(17)) and incorporate an ''including'' clause to reference the NRCS or university extension approved practices and systems; (4) Producers and reinsured companies should not be shunted off to NRCS to find out what counts as a ''sustainable farming practice;'' (5) RMA should consult with USDA's Agricultural Research Service (ARS) and the Organic Farming Research Foundation in developing a framework for a good sustainable and organic farming practices definition that recognizes current practices as well as providing provisions for the kind of experimentation—for instance, in varied and complex crop rotations—that may be unfamiliar to RMA but have made organic farming the successful and reliable practice it is today; (6) The definition could be deleted since the term is not used anywhere except in the definition of ''good farming practices;'' and (7) NRCS is not defined as part of the USDA.

Response: FCIC agrees the definition should be broadened and has revised the definition to remove the reference to NRCS and incorporate those practices generally recognized agricultural experts for the area to conserve or enhance the environment. This revision allows experts to determine whether the practice used is appropriate for the area. Although NRCS and others may have guidelines or regulations regarding sustainable farming practices it should not be necessary to reference them in this policy. It is inappropriate to incorporate the definition of ''sustainable agriculture'' from 7 U.S.C. 3103(17) because it includes provisions that are not suitable for an insurance policy such as sustaining and enhancing economic viability and quality of life. FCIC has incorporated those provisions regarding enhancing and conserving natural resources. FCIC has included provisions that would be permit consultation with ARS and the Organic Farming Research Foundation to determine whether the farming practice used or to be used qualifies as a sustainable farming practice. Just because a term is only used once, it must still be defined if there could be any confusion as to its meaning. Since the term ''NRCS'' is removed from the definition, it is not necessary to define it.

Comment: Several commenters thought the provisions in section 3(f) would encourage producers to make a decision to plant or not plant based on the effect planting has on the APH.

Response: Due to other revisions, the applicable provision is now section 3(e). Producers must make their decisions based on what is best for their farming operations. However, sometimes those decisions have consequences. Under this provision, if the producer elects to plant after a crop has been prevented from being planted, the consequence is that the producer will receive a yield for the purposes of APH. Since this is statutorily mandated, FCIC has no choice but to include the provision even though it may affect the producer's decision. Additionally, FCIC has revised section 3(e) to clarify that the provisions contained therein do not apply if the double cropping requirements have been met, because section 108 of ARPA specifies that if the producer meets the double cropping requirements, the assigned yield will not be included in the APH for the first insured crop that was prevented from being planted.

Comment: A few commenters acknowledged the provisions in section 3(f) are mandated by ARPA, but stated there will be a number of underwriting and data processing questions to be resolved in order to be able to implement this in the APH process. For example, separate yield descriptors may be needed to identify prevented planting yields and blended yields and the addition of prevented planting data to the Policy Holder Tracking System. In this case, there may be more detail in section (3)(f)(1)–(3) than is needed in the basic policy language. As written, it will require data processing changes to at least three APH entries (total production, acres and per-acre yield) when, if not mandated by the policy language, it might be possible to achieve the same result while only affecting the per-acre yield entry.

Response: Even though it may affect several APH entries and some systems may be impacted, it is important that the information be in the policy so the producer can determine how planting a second crop will affect his or her yield. No change has been made.

Comment: A commenter suggested changing ''APH yield'' to ''approved yield'' in section 3(f).

Response: FCIC agrees with the comment and has changed the provision accordingly.

Comment: A commenter stated section 3(f) applies only to APH crops and that non-APH crops should be addressed.

Response: Section 108 of ARPA only refers to adjustments to the APH that are to be used to determine the subsequent years' APH. There are no references to other plans of insurance. No change has been made.

Comment: A few commenters recommended deleting section 3(f) because, in prevented planting situations, there is no actual production history.

Response: FCIC cannot delete redesignated section 3(e) because section 108 of ARPA now requires a yield be determined for prevented planting acreage to be used in the actual production history. No change has been made.

Comment: A commenter stated section 3(f) is confusing and recommended calculating the APH based on the harvested acreage in the unit when at least 35 percent of the acreage in the unit is harvested.

Response: Section 108 of ARPA mandated that 60 percent of the APH yield will be included in the APH database for the first crop whenever the first crop is prevented from being planted and a second crop is planted. This section did not provide for any exceptions based on the amount of acreage that is prevented from being planted. No change can be made.

Comment: A commenter suggested changing the phrase ''its respective yield determined in accordance with this subsection'' to ''60 percent of the approved yield'' in section 3(f)(1).

Response: FCIC agrees and has revised the provision accordingly.

Comment: Many commenters commented on the provisions proposed in section 9(a)(8) that allow a producer to elect not to insure second crop acreage when there is an insurable loss for planted acreage of a first crop. The comments are as follows: (1) Several commenters stated the term ''elect''

implies a new form is required, and this process would also require the completion of a new or revised acreage report, which does not seem to be addressed; (2) Several commenters asked who would record the election and what procedures would be used; (3) A commenter stated the provisions should be revised so it is clear to the producer how the election is to be communicated and documented; (4) A commenter stated a new form or guideline for the second crop will be needed. They believe it is unclear if a box to check or a new form will need to be used by the adjuster when appraising and releasing the first crop. The commenter added this will be a training issue for all involved; (5) Some commenters stated the provisions will be difficult to administer; (6) Some commenters asked why the sentence is in parentheses. They stated the election is required at time of appraisal, which will require agent involvement in the loss process, which is prohibited by the SRA and this language needs to be coordinated with SRA requirements; (7) A commenter stated the provisions need to be clarified as to when a company releases the acreage, who is responsible or able to accept the insured's request to insure the second crop acreage, the agent or the company; (8) Some commenters stated FCIC should consider whether this would be more appropriate under section 8—Insured Crop; and (9) A commenter believes a cleaner approach would have been to simply include language stipulating insurance for a second crop planted after the failure of an initial crop lost due to non-emergence of seed would not become effective until the second crop emerges. They believe such language would prevent payment of a second indemnity for drought in the same crop year on the same acreage, but still allow a producer who is lucky enough to establish a second crop to pay for and receive coverage for the remainder of the insurance period. The commenter further recommended RMA rescind a 2002 change in the Agency's Loss Adjustment Manual (LAM) that requires a 15-day waiting period after the end of the late planting period before a crop can be appraised for non-emergence. They stated RMA's oft-stated reasoning behind this rule was it prevents a producer from waiting until the last day of the late planting period and then being able to get an adjustment one day later. They suggest if RMA is truly worried about producers waiting to plant until the end of the late planting period (and taking a significant reduction of coverage without any reduction in the associated premium) to get a quick non-emergence appraisal that they instead create rules to apply directly to those very few individuals. The commenter believes for instance, RMA could require a report of the planting date for each insured unit planted during the late planting period and not allow an appraisal until the end of the late planting period or at least 7–10 days from the actual date of planting if planting occurred with less than seven days remaining in the late planting period. They stated this would allow producers who planted by the final planting date to get an appraisal at the end of the late planting period (after their crop has been in the ground at least 15 days) and establish a minimum 7–10 day emergence window for crops planted toward the end of the late planting period. The commenter has in the past been very critical of the addition of the additional 15-day waiting period due to the fact there is no evidence they have been able to discover supporting the need for this rule to address a real problem. Instead, they believe the rule was developed only to be used as a stop gap method for preventing a producer from gaining the release of non-emerged acreage and planting a second crop of grain sorghum before the final planting date. The commenter believes with the development and implementation of the proposed first crop and second crop rule, RMA should remove the additional 15-day waiting period to allow for the timely planting of an uninsured second crop. They suggested if RMA determines a sufficient number of producers are taking advantage of the late planting period, RMA should look into a revised rule similar to the one suggested above to deal specifically with acreage planted during the late planting period.

Response: Due to other revisions, the applicable provision is now section 9(a)(7). For GRP policies, the producer will make the election not to insure the second crop acreage on the acreage report if it insured under GRP. For policies other than GRP, the provision has been revised to require that producers provide written notice of the election at the time the first insured crop acreage is released. The format of such written notice is up to the insurance provider. FCIC does not require any specific forms. Under the notice provisions of the policy, it would be the producer's responsibility to provide written notice to the agent. As revised, FCIC no longer believes that the provision will be difficult to administer. Just because a notice is provided to an agent regarding an election at loss time, this does not mean that the agent is to be involved in the loss adjustment. The prohibitions in the SRA continue to apply in these situations. The agent's role is merely ministerial. The parenthesis have been removed. FCIC disagrees this provision would be more appropriate in section 8 since this is an insurable acreage issue that only applies to acreage where a second crop has been planted and is not dependent on the crop planted. FCIC cannot consider the ''non-emergence of seed'' approach recommended to resolve multiple benefit issues addressed by ARPA because section 108 of ARPA specifies that it is applicable whenever the crop is planted for harvest and there is no requirement that the crop actually emerge. Since the Basic Provisions do not address the time a crop may or may not be released, the recommendation to remove LAM procedures cannot be made in this rule. However, all LAM procedures will be made consistent with the provisions of this rule. FCIC has also restructured section 9(a)(7) for clarity.

Comment: Some commenters recommended that section 9(a)(9)(i)(A) be deleted, and that alternately, if (A) is not deleted, they recommended it be revised to require all 3 crops to be harvested, not just the 3rd crop. They also suggested that if (A) is not deleted, the ''or'' be changed to ''and.'' A commenter asked if this is trying to address a previous operator on the land, and if not, what it is addressing. They believe the entirety of sections 9(a)(8) and(9) are very difficult to administer, and asked whose problem it ultimately is to properly administer. The commenter stated the agent is saddled with tremendous errors and omission exposure, and that typically agents enter what the insured reports. They added this language would require the agent to ask questions on a hypothetical basis of every insured in an attempt to determine if a situation might possibly exist, which would be an impossible situation, and one they believe will only be administered on a ''gotcha'' basis by RMA.

Response: Due to other revisions, the applicable provision is now section 9(a)(8). FCIC does not agree the provision can be deleted. Section 108 of ARPA allows both sections 9(a)(8)(i)(A) and (B) to be conditions upon which the third crop planted on the acreage in the same crop year can be insured. FCIC cannot restrict the ability of the producer to qualify for insurance beyond that specified in ARPA. FCIC agrees the producer should have evidence that three crops have been harvested and has revised the provision accordingly. The suggestion to change

the word ''or'' to ''and'' cannot be made because ARPA allows either the producer to prove that they themselves met the requirement or that previous producers met the requirement on the applicable acreage. Since it is a condition of insurability, it is the insurance providers responsibility to determine whether the crops planted in any crop year are the first, second or third. FCIC understands the provisions are somewhat complex and may require some additional work. FCIC will assist the insurance providers in any way it can to facilitate the process. However, since the provisions are required by ARPA, no change can be made.

Comment: A few commenters asked which crops section 9(a)(9) is applicable to (for example, row crops or vegetable crops.) Some of the commenters asked how it would be determined whether or not it is ''an established practice in the area to plant three or more crops for harvest on the same acreage in the same crop year'' and what kind of documentation would be needed.

Response: The provisions of redesignated section 9(a)(8) are applicable to all crops, including row and vegetable crops. Whether or not it is a generally recognized practice in the area to plant and harvest three crops will be determined by the insurance providers. No specific documentation is required in the policy. However, if the insurance provider believes the practice is questionable, it should obtain a written opinion from agricultural experts, the organic agricultural industry, or request a determination be made by FCIC.

Comment: A commenter would like to see winter wheat, whether intended for harvest or not, considered a first crop with regard to insurability of ''third'' and subsequent crops.

Response: ARPA requires the first crop to be an insured crop and planted for harvest. Therefore, winter wheat that is not insured or it is not planted for harvest cannot be considered a first crop when determining the third or more crops. No changes have been made.

Comment: Numerous commenters expressed concern with the proposed language in section 14(d)(1) (Your Duties). The comments are as follows: (1) A commenter objected to the proposed provisions stating it is unrealistic to expect an insured to maintain separate production records within the same unit. The commenter also believes the proposed change would unfairly discriminate against any insured who typically double crops; (2) A commenter stated the proposed provisions create a new geographic area or ''subunit'' previously unknown to the federal crop insurance program. The commenter stated in addition to the substantially increased administrative burden on the producer, companies will have to find some way to describe, identify and keep records about such sub-units, which can be infinite in number and change their boundaries from year to year. They believe the proposed provision is simply a bad idea incapable of resuscitation through improved drafting; (3) A commenter stated the proposed requirements should only be at the request of the company, otherwise it is burdensome for both the insured and the company. The commenter stated the proposed provisions require records by acreage, not unit, which they feel is probably not practical; (4) A commenter stated the proposed requirements are too burdensome. The commenter does not believe it should be necessary to keep records separate between first and second crops, since all production is aggregated to the unit; (5) Several commenters stated the proposed requirements are very confusing. They stated the proposed change creates additional record-keeping burdens on the insured, especially if portions of a field or unit were planted to a crop that failed and a second crop is planted on the entire acreage in the field or unit. The commenters believe keeping records for the acreage of the second crop where the first crop failed will be difficult to verify; (6) A commenter stated while the proposed provisions are necessary, the example of keeping production records from 10 acres of wheat may not look practical; (7) A commenter stated the proposed provisions should specifically reference section 15(e)(2) and not just 15(e); (8) Several commenters stated the provisions are confusing and should be clarified. They suggested the parenthetical sentences might be better as a separate item since they provide additional requirements beyond those in the first sentence of the paragraph; and (9) A commenter recommended the last sentence be clarified and specifically state if it is intended to allocate all of the production from a field or if production will be pro-rated on a per acre basis.

Response: FCIC agrees the provisions proposed in section 14 (Your Duties) (d)(1) may require additional burdens on the insured and insurance provider. However, ARPA requires that insurance benefits for a first crop be limited when a second crop is planted on the same acreage in the same year if the producer suffers an insurable loss on the second crop, except in the case of double-cropping. Therefore, separate production records are necessary for acreage planted to a first and second crop to determine the appropriate indemnity reduction. FCIC cannot eliminate this requirement and still be in compliance with ARPA. No change has been made. However, if the producer fails to maintain separate records, provisions are also included in section 14 that allow insurance providers to allocate production. FCIC disagrees with the comment that the provisions unfairly discriminate against an insured who typically double crops. Since double cropped acreage is exempt from the indemnity reduction applicable when a second crop is planted for harvest, the additional record keeping requirements would not apply. FCIC agrees that additional records must be maintained for claim audit purposes. However, no specific subunit is created and APH records for the subunit would not need to be maintained for future years. No change has been made. FCIC agrees the reference to section 15 should be changed to reference section 15(e)(2) and FCIC has revised the provision accordingly. FCIC agrees the parentheses in the proposed language are not necessary and has removed them and added language to help clarify this section. FCIC cannot use the per acre basis because there may be circumstances where the yield guarantee is different and using the proportion to liability method takes into account these yield differences. Therefore, no change has been made in response to the comment. However, FCIC has determined it is necessary to state the consequences of failure to provide any production records for the second crop and has revised the provisions to specify that the reduction will continue to apply if such production records are not provided.

Comment: Several commenters commented on the provisions proposed in section 14(f) (Your Duties) that require earlier notice of prevented planting. The comments are as follows: (1) A commenter stated the proposed provisions would be beneficial if the prevented planting determination was made at the time of notice. The commenter added that as it is now, there is nothing to encourage the company to make a prevented planting determination until late in the season; (2) A commenter stated the proposed provisions requiring the prevented planting acreage report/notice of loss to be reported earlier than the ''normal'' acreage report create additional reporting and burden. The commenter

questions what is wrong with the current process. They stated this change could result in multiple prevented planting acreage reports and increase loss adjustment expense cost. The commenter stated the company still has to wait to pay prevented planting losses if the crop is insured under a revenue plan of insurance, plus has to wait to see what the producer does get planted, so they do not see any advantage to the earlier reporting requirement for prevented planting; and (3) Several commenters disagreed with the proposed provisions. Some of the commenters do not believe it is feasible for most producers to be documenting prevented planting losses within 72 hours. They stated many crops have different final planting dates, the producer would still be busy trying to plant other crops and that time is critical during spring planting. The commenters recommended the current provisions be retained that allow producers to report prevented planting acres by the acreage reporting date. A commenter stated the proposed provisions are far too strict. The commenter believes notification of prevented planting should be given when producers provide their acreage reports.

Response: The insurance providers can certainly make the determinations of the prevented planting at the time notice is given and no longer have to wait until after the acreage reporting date. Under current provisions, the insured is not required to give notice of prevented planting acreage until the acreage reporting date, which is well after the time the insured cause of loss prevented the producer from planting, making it extremely difficult for the insurance company to verify an insured cause of loss existed and prevented planting. The proposed provisions were added to improve program integrity by requiring insureds to report notice of prevented planting within 72 hours of prevented planting, thus allowing the insurance company an earlier opportunity to verify the cause of prevented planting. FCIC agrees the proposed change may create additional reporting requirements for insureds. However, this change is necessary to improve program integrity. FCIC does not agree the proposed provisions create additional loss adjustment expenses or multiple prevented planting acreage reports. The proposed earlier notice of prevented planting is not required to be made on an acreage report, therefore multiple prevented planting acreage reports would not be necessary. Under both the current and proposed provisions, insurance companies are required to verify the producer was prevented from planting due to an insured cause of loss that occurred within the insurance period and adjust the prevented planting claims. Therefore, the burden on the insurance provider remains the same, it is only the timing that is different. Therefore, no change has been made.

Comment: A commenter stated the provisions proposed in section 14(f) (Your Duties) conflict with current language in section 33 that specifies notice of loss must be reported to the crop insurance agent and not the company.

Response: FCIC does not believe the proposed provision conflicts with provisions in section 33. Throughout section 14, the language for notice requirements references ''us.'' This just means that notice to the insurance provider is provided through the agent, as specified in section 33. Therefore, no change has been made.

Comment: Several commenters stated that section 14(f) (Your Duties) should be revised to require the insured must be prevented from planting by the final planting date. A commenter suggested the following language: ''(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after: (1) The final planting date; and (2) If applicable, you determine you will not be able to plant the insured crop within any applicable late planting period.'' A few commenters stated the insured must be prevented from planting by the final planting date, therefore the phrase ''if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable'' should be deleted in section 14(f)(1) (Your Duties). Another commenter suggested the following language: ''(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after: (1) The final planting date. (2) You determine you will not be able to plant the insured crop within any applicable late planting period. (3) If you do plant during the late planting period, you must revise the acreage report to reflect the correct planting 72 hours after the end of the late planting period for the crop.'' A commenter suggested inserting the words ''due to an insurable cause occurring prior to the final planting date'' after the word ''crop'' in section 14(f) (Your Duties).

Response: The first suggested change would require two notices and this would be an unnecessary burden on the producer. Therefore, no change has been made. The second suggestion cannot be adopted because it would conflict with the definition of ''prevented planting'' contained in section 1 and provisions contained in section 17, which specify when a producer must be prevented from planting. No change has been made. The third suggestion is not adopted because the producer is already required to report all planted acreage on the acreage report. Therefore, no revision or additional requirements are needed. No change has been made. The last suggestion is not adopted because the purpose of the notice is to allow the insurance provider the best opportunity to determine whether the producer was prevented from planting due to an insurable cause. Therefore, whether the cause is insurable cannot be made a condition of when the notice must be provided. No change has been made.

Comment: A commenter stated the change proposed in section 14(f) (Your Duties) will require losses to be reported for each field with prevented planting acreage. The commenter states this will be a major training issue.

Response: FCIC does not agree the proposed change will require losses to be reported for each field with prevented planting acreage. Section 14(f) requires notice when the insured crop is prevented from being planted. Notice on a field-by-field basis is not required. Therefore, no change has been made.

Comment: A commenter recommended the last part of section 14(f)(1) and all of (2) (Your Duties) be deleted, so it will simply read ''In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after the final planting date.'' The commenter believes the language they recommend be deleted is confusing and can be handled in procedure.

Response: FCIC disagrees with the comment. Prevented planting can occur during the late planting period and the producer must be made aware of the reporting requirements under such circumstances. This cannot be done in procedures because the producer does not receive them. Therefore, no change has been made.

Comment: A commenter recommended that FCIC amend section 14(f)(1) (Your Duties) to require the insured to provide notice within 72 hours of the late planting period, rather than of the final planting date. They believe an insured that must report notice within 72 hours of the final planting date is more likely to claim a prevented planting loss, and that the

additional planting time may persuade the insured to plant a crop. The commenter stated the purpose of the program is to encourage, not discourage, agricultural production. They stated this change will obviate the need for subsection (f)(2). Another commenter suggested that section 14(f)(1) (Your Duties) should read as follows: ''The final planting date; or'', and strike out all other wording in the proposed subsection (f)(1).

Response: Requiring a later notice when the producer never intended to plant the crop during the late planting period inhibits the insurance provider's ability to verify the cause of loss. Additionally, the recommended change does not address when notice of prevented planting would be required for crops that do not have a late planting period. Therefore, no change has been made.

Comment: A commenter recommended section 14 (Our Duties) be revised to state that both the government and reinsured companies have the duty to participate in reconsideration, mediation and NAD appeals.

Response: FCIC does not agree with the recommended change. Provisions contained in section 14 (Our Duties) referencing arbitration, reconsideration, and appeals are intended to specify when losses will be paid, and not how the appeals process will operate or who will participate. Other provisions contained in section 20, 7 CFR part 11 and 7 CFR part 400, subpart J specify how, and by whom, arbitrations, reconsiderations, mediations and NAD appeals will be conducted. Therefore, no change has been made.

Comment: A commenter provided the following comments on the provisions contained in section 14(a) (Our Duties) that require if the insured has complied with all policy provisions, ''we will pay your loss within 30 days after'' agreement, completion of arbitration/appeal/court adjudication. The commenter stated exceptions include the inability to pay and a deferral period. The commenter believes a deferral period in which information may be gathered may be an acceptable delay; however, they believe acceptable reasons for an inability to pay a loss should be clarified. The commenter stated producers have found payment delays to be common and the 30-day rule easily avoided. The commenter believes if payment is not possible within the 30-day requirement, an insured should be compensated for the late indemnity payment.

Response: Since no changes were proposed to provisions regarding the insurers inability to determine the amount of the loss contained in section 14(b) (Our Duties) or the provisions regarding deferral of loss adjustment until the amount of loss can be accurately determined contained in section 14(c) (Our Duties), the public was not provided an opportunity to comment on the recommended changes. Therefore, the recommendations cannot be incorporated in the final rule.

Comment: A few commenters recommended the words ''the later of'' be added at the end of the text in section 14(a) (Our Duties) so that it reads as follows: ''within 30 days after the later of:'

Response: FCIC agrees with the recommendation and has revised the provision accordingly.

Comment: A commenter suggested the current language in section 14(a)(1) (Our Duties) be retained because they believe the added portion does not change anything and is not necessary.

Response: FCIC agrees with the comment and has revised the provision accordingly.

Comment: Several commenters recommended changing the colon at the end of section 14(a)(1) (Our Duties) to a semi-colon.

Response: FCIC agrees and the change to section 14(a)(1) (Our Duties) has been made accordingly.

Comment: A few commenters suggested the word ''or'' be added at the end of section 14(a)(1) (Our Duties) and at the end of section 14(a)(2) (Our Duties).

Response: Under proper drafting procedures, the use of ''or'' before the last paragraph implies that there is an ''or'' between each of the paragraphs in the subsection. Therefore, FCIC has added ''or'' only at the end of (a)(2).

Comment: A commenter suggested retaining the current language in section 14(a)(2) (Our Duties).

Response: FCIC does not agree. Since reconsideration of determinations regarding good farming practices are used to determine whether claims should be paid or the amount of the claim, there must be a delay in the payment of such claims until the process is complete. Therefore, no change has been made.

Comment: Many commenters stated that inclusion of the word ''arbitration'' in section 14(a)(2) (Our Duties) is inconsistent with removal of the arbitration clause proposed in section 20.

Response: Since FCIC will address the proposal to remove arbitration and the public comments regarding that proposal in a subsequent rule, no change is necessary.

Comment: A commenter believes an adverse selection issue could arise if the ''first crop'' and ''second crop'' are not insured by the same company. They stated for example, in Texas a wheat grower could buy wheat coverage by the sales closing date, then only report his so-called ''for grain'' acreage on the acreage reporting date, which would then drive whether wheat became the ''first crop.''

Response: In the scenario presented in the comment, the insured producer would have little indication of growing conditions for a second crop when reporting the wheat acreage in the fall. Therefore, if adverse selection does exist, it would not matter whether or not the first and second crops were insured with the same insurance provider. However, FCIC has revised the reporting requirements in section 9(a)(7) to ensure that both insurance providers know that there is a second crop. No change has been made.

Comment: Several comments were received regarding proposed provisions contained in sections 15(e) through (g). The comments are as follows: (1) A few commenters believed the producers rights and responsibilities for a partial loss on the first crop needed more clarification; (2) A few commenters asked, if one insurance company covers the first crop and a different company covers the second crop, who has responsibility and liability for paperwork and premiums; (3) A commenter questioned insuring only the first crop, and leaving the 2nd crop uninsured; (4) A few commenters wanted clarification regarding coverage and premium cost for second crop acreage and what happens when the second crop suffers an insurable loss; (5) A few commenters felt the 35% and 65% breakdown is confusing and one commenter did not feel the 35% is fair since most input costs could be incurred by the time the first crop is lost; (6) A few commenters were concerned with the extra work, burden and costs companies would bear to implement these rules because the rules may require adjusting the crop several times as well as making trips to help decide if the first crop is a total loss or partial loss; and (7) A few commenters felt sections 15(f) and (g) (which FCIC believes should be correctly cited as 15(e) and (f)) will increase loss adjustment expense (due to more paperwork and extra trips to the farm), and one of these stated the producer may ask for two calculations on loss adjustment and select the ''best deal.''

Response: Section 15 only pertains to the manner in which payments are made. FCIC has clarified sections 9 and

14 regarding the notice requirements, record keeping for any acreage subject to indemnity reduction when a second crop is planted, and timing of payments. When more than one insurance company is involved, and the insured elects to insure a second crop, it would be the responsibility of the company insuring the first crop to pay the reduced indemnity and collect the reduced premium for the first crop and to revise the indemnity and premium if there is no loss to the second crop. The proposed provisions allow a producer to elect whether or not they want insurance on second crop acreage because a full payment for a first crop can often exceed the total of a reduced indemnity payment on the first crop and a full indemnity payment on the second crop. For example, a producer who loses a cotton crop and would receive an indemnity of $1,000 but elects to plant grain sorghum on the same acreage, with a liability of $500, would only collect $350 for the cotton and even if there was a total loss to the grain sorghum, the producer would only collect $850 for the crop year, instead of $1000 they could have collected if they had not planted or insured the second crop. FCIC has clarified sections 15(e) and (f) to specify that there is no impact on the premium or indemnity for second crop acreage even when the second crop suffers a loss or a subsequent crop is planted on the same acreage. Section 108 of ARPA requires the 35 percent payment, which equates to a 65 percent reduction. Therefore, both percentages are used to determine the indemnities for the first crop when the second crop is planted and does not sustain an insurable loss. No change can be made in these percentages. FCIC agrees administration of the new rules may require some extra work when adjustments to the claim are needed because a second crop is planted. FCIC also agrees that for prevented planting acreage, an additional loss adjustment is needed when a second crop is planted. FCIC agrees that additional work is required to determine the effects of planting a second crop. However, since ARPA requires these provisions, no changes can be made.

Comment: A commenter suggested the provisions proposed in section 15(f) be modified to treat prevented planting claims in a similar manner as non-emergence claims. The commenter stated knowing weather related situations can change, they believe a producer who files a prevented planting claim should be able to keep 100 percent of the indemnity if the situation changes and the producer is later able to plant a second crop on the acreage that they be allowed to keep the prevented planting indemnity if they elect not to insure the second crop. They believe the so-called ''black dirt'' policy currently in place prevents growers from making good management decisions and capitalizing on what can often be rapidly changed growing conditions, even when they are willing to take the risk on themselves. The commenter recommended the proposed rules be stricken until such time as a comprehensive review of prevented planting rules can be completed and a coherent set of recommendations in this regard can be put forth.

Response: FCIC not accept these suggestions. Section 108 of ARPA mandates a reduction in prevented planting payments for first crops anytime a second crop is planted on the same acreage, except in the case of double-cropping. Unlike the provisions regarding a second crop planted on acreage planted to a first crop on the same acreage, which only requires the reduction when the second crop is insured and suffers and insurable loss, ARPA mandates such reduction to the prevented planting payment regardless of whether the second crop is insured. Therefore, no change can be made.

Comment: A commenter stated the provisions proposed in section 15(h) seem to conflict with the definition of ''cover crop.''

Response: The double-cropping requirements cannot be met if a cover crop is a second crop and is hayed, grazed or otherwise harvested. ARPA requires, for the purpose of proving double-cropping, that both crops be insurable. Cover crops are not insurable. Therefore, no changes can be made.

Comment: A commenter asked what is meant by ''insurance offered under the authority of the Act'' in section 15(h)(3). In other words, does the insurance simply have to be offered for the two crops, or do the specific crop types, practices, etc., have to be included in the actuarial table for the county.

Response: ''Insurance offered under the authority of the Act'' means that the policy is reinsured by FCIC. Private hail policies or other types of crop insurance policies that are not reinsured by FCIC are not offered under the authority of the Act. Further, insurance must be offered for the specific crop types, practices, etc., in order to meet double-cropping requirements. If the actuarial documents do not include the specific crop types, practices, etc., insurance is not offered under the authority of the Act, unless insurance was provided by a written agreement approved by FCIC.

Comment: A commenter stated that the provisions proposed in section 17(c) may present computer systems problems.

Response: FCIC agrees and appropriate changes will be made in data systems to accommodate situations in which premium reductions are required. No change has been made.

Comment: A few commenters thought the language in section 17(f)(4) is confusing, in part due to the use of like terms in different ways than they have been used in other sections. They asked whether they should interpret the language proposed to remove the requirement that the same acreage be prevented. One of the commenters suggested language be added to identify the second crop and require that records must be on the same physical location.

Response: FCIC incorporated the double cropping provisions from ARPA. However, for the purposes of readability, FCIC simply changed the wording to fit within the existing text. Therefore, the terms are being used in the same manner as stated in other policy provisions. Section 108 of ARPA allows a producer to rotate the acreage they double crop and does not restrict the producer from qualifying for benefits associated with double cropping on specific acreage they have not double cropped in the past. Therefore, the provisions do not require the same physical acreage to be prevented from being planted as has been double cropped in the past. No change has been made.

Comment: A commenter asked, regarding the provisions proposed in section 17(f)(4)(i), whether the insurance provider, FCIC or some other entity would determine whether or not a practice is an ''established practice.'' The commenter further asked whether FCIC is the determining agency, and what procedures must the insured or the insurance provider follow to obtain such a determination.

Response: It is the insurance providers responsibility to determine whether it is an established practice to plant the second crop for harvest following harvest of the first insured crop based upon whether such practice is generally recognized by agricultural experts or the organic agricultural industry for the area. FCIC will not be determining whether the practice is established in the area. However, there may still be issues regarding whether the practice qualifies as a good farming practice even if it is established in the area. In such cases, FCIC may be requested to make a determination. But this is only after the initial determination of whether the practice is

established has been made. To make that determination, insurance providers must consult with agricultural experts or organic agricultural industry.

Comment: A commenter suggested the word ''the'' be inserted after the word ''double-cropped'' and before the word ''acreage'' in section 17(f)(4)(ii).

Response: FCIC disagrees with the recommended change because the addition would lead a reader to believe specific acreage had to be double cropped in the past. As stated above, this is not required. Therefore, no change has been made.

Comment: A few comments were received regarding section 17(f)(5). The comments are as follows: (1) A few commenters believe the proposed language is unclear, and they are not sure what is intended; (2) A commenter recommended the word ''crop'' be replaced with the words ''agricultural commodity'' in the first sentence of section 17(f)(5). The commenter also asked how a company would know if another crop had been planted on the acreage; and (3) A commenter suggested deleting the comma after the words ''if any crop'' in the first sentence of section 17(f)(5). The commenter also recommended the words ''or other authorization by USDA allows haying/grazing'' (similar to opening of the Conservation Reserve Program (CRP) acreage) be inserted at the end of the paragraph.

Response: FCIC is not sure where the ambiguity is. The provision is intended to preclude the payment of a prevented planting payment if the acreage is planted or a volunteer crop is harvested within the time frame specified. The provision does not distinguish between who plants the crop or harvests the volunteer crop. If it occurs on the acreage, no prevented planting payment is made. FCIC disagrees that the word ''crop'' should be replaced with ''agricultural commodity'' because it would make this provision inconsistent with other related provisions in the policy. FCIC will consider the appropriateness of such a change in the future. To properly administer these provisions, insurance providers must ask the producer if another crop has been on the acreage in the same crop year. FCIC agrees the comma should be deleted after the phrase ''if any crop'' in the first sentence and has revised the provision accordingly. FCIC disagrees with the comment recommending the addition of language that would allow emergency haying or grazing. ARPA does not allow exceptions from the reductions in premium and indemnity when the crop was planted for harvest. If the provision were added, it would be impossible to determine whether or not the insured intended to plant the crop for harvest. To ease administration, there is now an assumption that if the crop was harvested, it was planted for harvest. Therefore, no change has been made.

Comment: A commenter believes the provisions proposed in section 17(f)(5)(ii) seem inconsistent with the provisions of section 15(g).

Response: FCIC agrees that a conflict exists. As proposed, section 15 indicated a prevented planting payment would be reduced when a cover crop was hayed, grazed or otherwise harvested, while section 17 indicated no prevented planting payment would be made in this case. The provisions in section 15(g)(3) have been revised to indicate the prevented planting payment for a first crop is reduced when a cover crop is hayed, grazed or otherwise harvested after the end of the late planting period, or after the final planting date if a late planting period is not applicable. Section 17(f)(5) has also been revised to indicate the prevented planting payment for a first crop cannot be made when a cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period, or on or prior to the final planting date if no late planting period is applicable. FCIC has also restructured section 17(f)(5) for clarification. Both sections 15(g)(3) and 17(f)(5) have also been revised to clarify the impact of haying or grazing a volunteer crop.

Comment: A commenter stated the proposed rule admittedly liberalizes the prevented planting provisions for two groups of producers, which will mean additional indemnities, costs and other outlays of money by SRA holders. The commenter stated despite admitting the Proposed Rule liberalizes the prevented planting provisions, the agency states that it will not adjust premium rates to reflect the changes in the prevented planting provisions, in fact, the agency states adjusting rates would be ''inappropriate.'' The commenter believes the agency's refusal to adjust rates to account for the liberalization of the prevented planting provisions is arbitrary and capricious, in violation of the custom, practice and course of dealings between the agency and the SRA holders, contrary to the agency's interpretation of its own duties and obligations under the SRA, the Federal Crop Insurance Act (Act) and regulations, in breach of the current and prior SRAs, in violation of the Act, and contrary to the principles espoused in the recent Supreme Court cases of *Mobil Oil Exploration & Producing Southeast, Inc.* v. *United States,* 2000 WL 807187 U.S. (June 26, 2000) and *United States* v. *Winstar Corp.,* 518 U.S. 839 (1996). The commenter stated any and all rules increasing the outlay of money by SRA holders must be appropriately rated in an actuarially sound manner. They added moreover, if adequate loss experience is unavailable to support the necessary actuarial calculations, the provisions cannot, and should not, be liberalized. The commenter hereby reserves, and specifically does not waive, any and all claims that the SRA holders they represent and their Managing General Agents may have against the agency or the FCIC arising out of the liberalization of the prevented planning rules, or any other rules or policy provisions, contemplated in the Proposed Rule.

Response: The commenter misinterprets the cost benefit analysis (CBA) for the proposed rule. The CBA does state prevented planting provisions are liberalized. This is because insureds now have the additional choice of planting a second crop and receiving a prevented planting payment. However, the CBA indicates changes made to the provisions may require either decreases or increases in the premium rate associated with prevented planting. The CBA specifies several scenarios could exist with the new provisions and examines each with respect to the impact on program costs. Whether or not the rate for prevented planting coverage is increased or decreased depends, in part, on the number of people who had a full prevented planting payment in the past who now will elect to receive the reduced preventing planting payment and plant a second crop. In addition, the number of people who did not receive a prevented planting payment in the past, who would now receive a reduced (35 percent) prevented planting payment must be considered. FCIC will consider all of the possible scenarios resulting in increased and decreased prevented planting payment amounts when establishing premium rates for the new provisions and will make appropriate adjustments in premium rates to ensure that they are actuarially sound.

Comment: Several commenters commented on the provisions proposed in section 20 that allow producers to request a reconsideration of any loss determination regarding ''good farming practices.'' The comments are as follows: (1) A commenter stated although they believe the proposed language is effective and clear, they question why there is a separate reconsideration procedure specifically for determinations regarding good farming practices; (2) A few commenters

were concerned about producers ability to resolve disputes regarding good farming practices with the proposed elimination of arbitration; (3) A commenter stated the appeal and review provisions proposed are difficult to follow and should be rewritten, if to be maintained at all, and should read as follows: ''Only the FCIC may make a determination regarding good farming practices. If you do not agree with any loss determination made by it regarding good farming practices, you may request reconsideration of its determination in accordance with the review process established for this specific purpose and published at 7 CFR part 400, subpart J.'' The commenter added there is no reason to refer to appeal of other determinations through application of the procedures specified at 7 CFR part 11, subpart A, since FCIC is not a party to the insurance policy and has no role for making determinations other than those with respect to good farming practices; (4) A few commenters stated the proposed provisions are not needed because only FCIC can render a determination of ''good farming practices;'' (5) A few commenters stated there is a fine line in many cases between whether a farmer failed to exercise ''good farming practices'' with respect to a crop or ''abandoned'' the crop. Therefore, the commenters believe ''abandonment'' cases should likewise be subject to the reconsideration process; (6) A few commenters asked if mediation might be a part of the ''informal administrative process'' to be established by the Corporation in an adverse determination of ''good farming practices.'' The commenters believe mediation provides a vital opportunity for producers to speak with FCIC decision-makers face to face. One of the commenters stated the subjective nature of determining ''good farming practices'' and getting a clear understanding from the producer of what was done and the other factors at play, makes mediation an ideal way to sort those facts out in a confidential and non-adversarial setting. One of the commenters stated FCIC should solicit public input on a review process for determinations of ''good farming practices.'' The commenter stated that while there are bare references to the review process published at 7 CFR part 400, subpart J in the proposed provisions, there is no proposal for an administrative process in the proposed rule. The commenter realizes the Corporation published a final rule on the appeal procedures under USDA's general administrative regulations, (67 FR 13249 (2002)). The commenter added the proposed rule was published in 1999, prior to enactment of the ARPA, and the prefatory comments to the final rule state that, ''After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into the final rule.'' The commenter was disappointed the Corporation has taken this approach to its rule-making responsibilities. They added while ARPA clearly states good farming practice determinations will not be considered adverse decisions for purposes of the National Appeals Division, it is silent on whether mediation might be a part of the ''informal administrative process'' to be established by the Corporation. The commenter believes, especially in the absence of clear standards under which ''good farming practices'' will be determined, mediation may be a vital opportunity for producers to speak with FCIC decision-makers face to face. They stated the review process for good farming practice determinations should require the producer be given an opportunity to review and respond to the evidence available to or considered by the person who made the original determination. The commenter suggested the Corporation include the regulatory sections in 7 CFR part 400, subpart J if it extends or re-opens the comment period on the crop insurance rules; (7) A commenter suggested the CFR sections be referenced by number not letter, for easy reference and consistency with the rest of the policy; (8) A commenter stated some of the cited regulations do not appear to exist, but rather are ''reserved'' sections. The commenter also asked if these regulations will be finalized prior to the effective date of this policy, and if it is appropriate to reference ''reserved'' sections; and (9) A commenter suggested provisions regarding appeals and administrative reviews be removed from section 20 and incorporated in a separate section 21, since they appear to deal with determinations made only by FCIC or RMA.

Response: Section 123 of ARPA requires FCIC to establish an informal administrative process that allows a producer the right to a review of a determination regarding good farming practices. Even if the arbitration provisions remain, they will be inapplicable to determinations of good farming practices. The only dispute resolution mechanism available is the reconsideration process to FCIC. FCIC does not agree the provisions should be revised to specify only FCIC may make good farming practice determinations. FCIC has revised the definition of ''good farming practices'' to specify insurance companies make the determination based on consultation with experts and that insurance providers, or insureds through their insurance provider, may contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.'' FCIC disagrees reference to an appeal in accordance with 7 CFR part 11 is unnecessary. FCIC still makes certain determinations, such as approval of written agreements and some yields. FCIC has established the reconsideration process for good farming practices because it is required by ARPA. FCIC does not have the resources to reconsider other insurance provider decisions, such as abandonment. In addition, since a determination of abandonment is a factual determination made by the insurance company, any dispute regarding a determination of abandonment could be resolved through arbitration. Mediation cannot be a part of the reconsideration process. The purpose of mediation is to reach a compromise. However, determinations of good farming practices involve questions of fact based on whether the farming practices are generally recognized by experts for the area. The definition of ''generally recognized'' has been added to make the definition of ''good farming practices'' more objective and states that if there is a genuine dispute between experts, the practice is not generally recognized. Therefore, either the practice is or is not a good farming practice so there is no middle ground that could be achieved through mediation.

Since the reconsideration process was already codified prior to the proposed rule and FCIC did not propose any changes to the reconsideration process, there was no ability to solicit comments in the proposed rule. Any changes in the reconsideration process made in this final rule are in response to comments received to the proposed rule. If FCIC makes any other changes to the reconsideration process, it will solicit comments. Since determinations of good farming practices are based on the opinion of designated experts, the insured should be able to obtain the opinion upon which the determination was based and respond to the opinion in the reconsideration process. The determinations of lettering or numbering in the CFR is dictated by the Office of Federal Register and FCIC has

no authority to change such references. A final rule was published in the **Federal Register** on March 22, 2002, to amend the appeal regulations found in 7 CFR part 400, subpart J, to include the administrative reviews for determinations of good farming practices. Therefore, all of the regulations referenced within the proposed rule do exist and do not reference ''reserved'' sections. FCIC is also publishing a technical correction, concurrently with this final rule, to amend the appeal procedure regulations found in 7 CFR part 400, subpart J, to clarify determinations of good farming practices made by either the Agency or private insurance companies are subject to administrative review and to make other changes required in response to comments to the proposed rule. One such change is to put all the good farming practice reconsideration requirements in one section. FCIC has clarified section 20 to specify those provisions that are applicable to decisions made by the insurance provider and those made by FCIC. FCIC has added provisions to clarify that decisions with respect to good farming practices do not include determinations of the amount of assigned production for failure to use good farming practices.

Comment: A commenter asked why organic is a different unit when it is just a different practice in section 34(c).

Response: Farming methods used in organic operations are subject to specific criteria, separate from conventional practices. For example, organic producers are prohibited from using certain substances for the control of weeds, disease or insects and fertilizers that conventional producers may use. Additionally, organic production must be kept separate from conventional production to avoid losing its organic status. Since producers maintain records of planted acreage and harvested production for crops grown under an organic practice separate from crops grown conventionally, FCIC believes separate optional units are appropriate for organic acreage.

Comment: One commenter stated the language in section 36 does not conform to the language of ARPA. Another commenter stated that this language will supersede major portions of the Crop Insurance Handbook and current Actual Production History procedures.

Response: ARPA only specifies that FCIC allow such election and what the election consists of. These provisions in the rule are consistent with ARPA. However, ARPA does not specify the manner or timing for such election. Therefore, the manner and timing needed to be included in the policy. Minor revisions will be required to the existing yield adjustment procedures (yield substitution) contained in the Crop Insurance Handbook to conform with the new language in the Basic Provisions.

Comment: Several commenters stated the reference in section 36(a) to ''* * * actual yields in your production history that, due to insured causes of loss, are less than 60 percent of the applicable transitional yield* * *'' indicates this applies to ANY insured cause of loss, while section 13 of the 2003 Crop Insurance Handbook specifies ''* * *caused by drought, flood, or other natural disasters.'' The commenters stated that while the end result may be the same, they believe the difference in wording may lead to different interpretations, therefore, they suggest this be clarified.

Response: FCIC agrees that the provisions should be the same and will amend the Crop Insurance Handbook to be consistent.

Comment: Several commenters commented on the ending phrase in section 36(a) which states, ''* * * you may elect to exclude one or more of any such yields''. Several of the commenters believe the language leads to confusion. They feel the word ''excludes'' suggests these low actual yields are simply dropped from the Actual Production History (APH) calculation rather than having substitute yields used in their place. The commenters stated this is subsequently explained in subsection (c), but they feel it might be preferable to eliminate any confusion in the first paragraph. They recommended combining subsections (a) and (c).

One of the commenters recommended that FCIC amend the language to read: ''you may elect to exclude any of such actual or appraised yields.''

Response: FCIC agrees that section 36(a) should also refer to the replacement of yields and has modified the provision accordingly. FCIC has added a definition of ''actual yields'' that includes both actual and appraised yields. Therefore, no change is made.

Comment: A few commenters stated that while reference to ''one or more'' of these low actual yields may be technically correct, they believe it could be misunderstood. They believe that once yield adjustment is elected, all qualifying low actual yields are eligible for substitution, but actual implementation is on a database basis (at production reporting time, depending on which of the various possible yield adjustment methods result in the best approved Actual Production History yield), not on an individual yield basis. The commenter stated for example, one database for a crop/county policy may implement substitute yields while other databases use ''cups'' or yield floors, however within that first database, substitute yields would replace ALL qualifying low actual yields, not just some.

Response: Section 105 of ARPA authorizes the exclusion and substitution of any actual yield that was less than 60 percent of the applicable transitional yield. The insured will now have the option of excluding and replacing any individual qualifying actual yield within a database instead of replacing all such yields within a database. The provision has been revised for clarity.

Comment: Several commenters stated the language in section 36(b) sounds as though once the yield substitution is elected it can never be canceled, which is contrary to procedures contained in section 13A(4) and 13B of the 2003 Crop Insurance Handbook. They recommended adding ''* * * unless canceled by the applicable cancellation date.''

Response: Since yield substitution election can be made on an individual actual yield basis, FCIC agrees that the insured should be able to cancel each election in the database. If an election is cancelled, the actual yield will be used in the database. For example, if the insured elected to substitute yields in its database for the 1998 and 2000 crop year, for any subsequent crop year, the insured can elect to cancel the substitution for either or both years. The proposed language was so modified and requires the election to be cancelled by the applicable cancellation date.

Comment: A few commenters suggested the language in section 36(c) that states, ''* * * a yield equal to 60 percent of the T-yield that is applicable in the county * * *'' could be understood as always meaning the published county ''T'' Yield from the actuarial documents. They suggested replacing the language with the following: ''* * * a yield equal to 60 percent of the applicable T-yield. * * *'' The commenters believe this revision would be consistent with current procedural references to the ''applicable ''T'' Yield'' since other Actual Production History procedures may result in other types of ''T'' Yields, sometimes on a database basis, such as the simple average ''T'' Yield for added land, weighted average ''T'' Yields for perennials, etc. They also suggested referring to ''T'' Yields rather than T-yields to be consistent with the format used throughout the Crop Insurance Handbook.

Response: FCIC agrees the provision should reference the applicable T-yields and has revised sections 36(a) and (c) accordingly. With respect to the reference to T-yields, the Crop Insurance Handbook will be modified to conform with the Basic Provisions.

Comment: A few commenters suggested the parenthetical example in section 36(c) be rewritten to make the intended point that the substitute yields may vary by year. They believe as written, the language suggests the election of substitute yields is by year (rather than by crop/county with actual implementation by database).

Response: Section 36(a) and (c) clearly state that the producer may elect to exclude any individual qualifying actual yield for a crop year in the database. However, appropriate changes have been made to clarify that a crop year's individual actual yield is replaced with a percentage of the corresponding crop year's applicable T-yield.

Comment: Several commenters commented on section 36(d). A few of the commenters stated the language indicates the yield substitution election is not reversible. They believe this is contrary to current procedure, which allows the continuous Yield Adjustment Election to be elected and canceled on a crop/county basis, and also provides for the insured to decide whether to implement yield substitution by database each year the election is in place. The commenters stated an individual database under the election may have the best approved Actual Production History yield using substitute yields one year, but then might be better with a yield floor the following year, however as written, this now-irreversible election would preempt any subsequent use of yield floors (and ''cupped'' yields, which currently are preempted only the year following a year when substitute yields were used) until all substituted yields have dropped off the database. They believe an already complicated procedure for policyholders and agents would become even more difficult as policyholders would have to try to guess the long-term advantages and disadvantages of choosing this election. They recommended this policy language be revised to reflect current Crop Insurance Handbook procedure (without too much detail). The commenters believe if this change really is intended, it may explain why sections 36(a) and (c) are written to suggest that substitute yields are elected by year instead of implemented by database. They stated if that is the case, presumably carryover policyholders who had the yield substitution election the year before these new Basic Provisions become effective would be given the opportunity to cancel that election rather than being bound by these new rules that did not apply when they made the initial decision.

Response: FCIC agrees the election should be reversible and has added language to 36(b) to allow the cancellation of each election, if done not later than the applicable cancellation date.

Comment: One commenter asked for clarification of language in section 36(e) that references ''* * * such other basis as determined appropriate by FCIC to cover increased risk * * *''

Response: FCIC has not previously included its rating methodology in the policy because such methodology is always subject to adjustment to ensure actuarial soundness. Therefore, FCIC has revised the provision to require that the premium adjustment reflect the risk associated with the yield adjustment as mandated by ARPA.

Comment: A commenter stated there must be risk management tools and policies to reflect the changing risks inherent in a different (organic vs. conventional) agro-ecological system of management. The commenter also believes many farmers do not understand the complexities of the crop insurance programs. They stated although some new risk management tools have recently become available, USDA needs to do more to help support risk management tools for organic agriculture.

Response: FCIC has clarified the provisions to maximum extent practicable. Further, RMA has established comprehensive risk management education and outreach opportunities by providing on-going training to producers in the use of futures, options, crop insurance, and other risk management tools through which producers can manage their own risks. New risk management tools are continuously being developed and if anyone would like to submit a new policy for organic crops, they can do so under section 508(h) of the Act.

Comment: A commenter stated that sustainable and organic are two very different systems, one being natural continuous regeneration (sustainable), while the other, is unnatural, managed and manmade (organic). The commenter stated they had no idea what they are meant to identify, as sustainable in an independent perspective, which is not also organic, and that this should be clarified.

Response: FCIC agrees sustainable and organic farming practices are two distinctly different farming methods and has defined the two terms separately. Under the final provisions, organic farming practices will be insured as a separate practice, while sustainable farming practices will be insured under current conventional farming practices. FCIC does not believe further clarification is necessary.

Comment: Several commenters stated they assume FCIC reviewed procedure contained in the Organic Practice Handbook to ensure no conflicts exist between that procedure and the proposed provisions.

Response: FCIC assumes the commenters are referencing the procedures contained in the 2001 Organic Crop Insurance Underwriting Guide. The procedures contained in the underwriting guide will be revised to be consistent with the organic provisions and definitions contained in this final rule.

Comment: A commenter stated any loss of production caused by failure to follow ''all'' good farming practices, including necessary pesticide applications to control insects, disease, or weeds will result in an appraisal for uninsured causes. The commenter added organic producers are not allowed by regulation to use pesticides and they have better control of all three problems than many conventional producers. The commenter stated it is a well-known fact at Land Grant Universities that crop rotation is a solution to these problems.

Response: FCIC has revised the definition of ''good farming practices'' to include production methods generally recognized by the organic agricultural industry or contained in the organic plan for organic practices. Therefore, failure of the organic methods that meet the definition of good farming practice would not result in the assessment of production for uninsured causes of loss.

Comment: A commenter urged FCIC to ensure data for organic practices is included in all actuarial tables in all counties so individual written agreements would not be necessary. Another commenter stated FCIC should make affirmative efforts to expand the actuarial tables by adding information from reputable, contemporary studies of yields and expected market prices for organic and sustainably produced crops. The commenter added under the proposal, insurance coverage will only be available for sustainable and organic crops if there is enough information specified in the actuarial table to determine the premium rate.

Response: Separate organic practices cannot be listed in all actuarial tables

until sufficient organic data for all crops and counties is available. RMA has contracted independent studies to determine what reputable organic data, including yields and pricing information, is available that could be used to include separate organic practices in the Special Provisions. Under the proposed provisions, sustainable farming practices will be insured under the current conventional practices. Therefore, separate data will not be required to establish a separate sustainable farming practice in the Special Provisions. The proposed rule allows organic practices to be approved by written agreement if separate organic practices are not included in the Special Provisions.

Comment: Several commenters provided the following comments regarding the use of written agreements to insure crops grown using organic practices: (1) A few commenters asked why organic producers have to sign a written agreement; (2) A commenter recommended provisions be added allowing organic farming coverage without the need for written agreements; (3) Some commenters objected to the organic premium surcharge which they state is based on a perception of additional risk in organic production systems. The commenters asked if FCIC can come up with a scientific basis for the organic premium surcharge. They do not believe FCIC's perception is backed by any scientific evidence and, in fact, is directly contradicted by independent research on the agronomic and economic benefits of organic production systems; (4) Several of the commenters believe the extra charge to organic farmers is discriminatory. They stated they are paying more and receiving less coverage; (5) A commenter asked why a producer can insure an organically grown crop under a Group Risk Plan (GRP) policy without a written agreement, yet a written agreement is required to insure an organically grown crop under all other policies except Adjusted Gross Revenue (AGR); (6) A commenter stated separate (100%) T-Yields used to establish APH yields for certified organic or transitional acreage will be provided on the written agreement and asked who will be setting these yields and on what information the yields will be based; and (7) A few commenters stated while the proposed rule does add the possibility of organic insurance based on actuarial information in the future, in the meantime organic producers will have to rely on written agreements in a biased and economically discriminatory process (*i.e.*, insure without any written agreements, or go without insurance). They believe the proposed rule does little to alleviate that position, despite the attempt by Congress to eliminate such discrimination.

Response: Written agreements are needed where there is insufficient data to include organic practices in the actuarial tables. Organic practices cannot be insured under conventional practices because higher yield variability may exist, particularly in catastrophic events. FCIC has data that suggests that there is greater yield variability. Therefore, it may be necessary to include a premium load because premium rates are greatly dependent on the variability of yields and the premium rate must be reflective of the risk involved to be actuarially sound. The premium load will be based on the data FCIC has for organic crops. If the commenters have independent data that proves otherwise, FCIC recommends they provide the data to RMA for review. FCIC does not agree that the premium charged for an organic practice is discriminatory because it is based on the risk associated with the practice as required by section 508(d) of the Act. The GRP and AGR insurance programs differ significantly from the insurance provided under the Common Crop Insurance Policy Basic Provisions. Indemnities are paid to producers insured under GRP when a county loss is triggered, regardless of whether or not the individual producer suffered a loss. The AGR program provides insurance coverage based on the producer's historical adjusted gross revenue for the farm. Since neither of these insurance products provide coverage based on individual crop losses, as crops under the Common Crop Insurance Policy Basic Provisions do, organic crop practices do not materially alter the risk or coverage provided under either AGR or GRP policies. FCIC will be setting the T-yields for all practices based on the available data for the practice. FCIC has eliminated the bias and discrimination by considering whether the specific organic practice is a good farming practice. If sufficient and credible data is available, organic practices will be added to the actual documents. The organic industry is encouraged to provide data regarding organic practices.

Comment: Many commenters stated the final rule should add a clear statement that organic crop insurance coverage will not include insurance premium surcharges.

Response: FCIC cannot make such a statement because, as previously stated, the premium must be based on the risk associated with the practice and in some cases, may result in higher premiums. Therefore, no change has been made.

Comment: Some commenters stated if organic farmers need to keep and submit four years of records, maybe all farmers should have to supply four years of records.

Response: The record keeping requirements for written agreements will be the same for all producers regardless of whether the producer uses a conventional or organic practice. Further, the record keeping requirements will be the same for producers of conventional and organic practices in counties where conventional and organic practices are provided in the actuarial documents. Therefore, organic producers are not treated any differently than any other.

Comment: A commenter supported expansion of the AGR program to include all states in order to ensure fair prices are paid to certified organic growers and those using sustainable agricultural practices.

Response: FCIC cannot expand the AGR program in this rule. FCIC will consider this request when deciding whether to expand the AGR program in the future.

Comment: Many commenters were concerned about how organic prices will be established. The comments are as follows: (1) Many commenters stated the final rule should add a clear statement that organic crop insurance coverage will include full recognition of organic price premiums when making indemnity payments; (2) A commenter urged FCIC to ensure data on organic premiums is included in all actuarial tables in all counties so that fair returns for losses are paid to growers. They also stated fair prices should take into consideration market premiums for a given certified organic product; (3) Some commenters asked how the actuarial organic pricing tables will be set and if the organic industry will be given the opportunity to comment on the process and sources used to set actuarial pricing information for organic commodities; (4) Some commenters stated they are restricted to conventional market prices. They understand the market values will be changed in a couple of years, however until that time, they are asked to accept the conventional prices. The commenters were concerned as to who will establish the organic prices and how they will be determined; (5) A few commenters recommended until actuarial information for organic pricing is established, organic price premiums be based upon individual crop pricing histories or in the absence of an

individual history, upon a county average or the averages of multiple counties (to reach a critical mass, if necessary). They stated this system is used for establishing a basis for yields and could be used in the interim as actuarials are being developed; and (6) A commenter recommended a system of county averages be used for producers transitioning into organic production.

Response: FCIC cannot provide a statement that organic practices will include a price premium because the price is determined based on the projected market price at the time of harvest and there is no guarantee that the projected price at harvest for organic crops will be significantly different. If the projected market price at harvest for an organic crop is higher, such price will be provided on the actuarial table. FCIC will set organic prices in the same manner that prices are set for all crops. FCIC does not allow an opportunity to comment on the process or the sources of data used for setting any crop price. FCIC has contracted studies to research pricing data throughout the organic industry to determine if sufficient reliable pricing information is available that could be used to establish organic prices separate from conventional prices in the future. Until sufficient price data is available, FCIC has no choice but to offer conventional prices for organic crops. FCIC does not use individual crop pricing histories to set the expected market price because it is an inaccurate measure of such price. County averages may be used in the establishment of expected market prices for organic crops if they provide an accurate measure of the projected market price at the time of harvest. Therefore, no change has been made.

Comment: Several commenters believe the organic premium surcharge, coupled with the lack of insurance coverage based on organic prices, creates bias against organic producers. The comments are as follows: (1) A commenter stated the organic premium factor of 1.05 is not right unless producers are paid the price premium they are receiving; (2) Several commenters stated the crop insurance program is irrelevant to organic producers because of the organic premium surcharge and the lack of organic price premium; and (3) Several commenters stated over a year ago the organic community raised two major issues, the organic premium surcharge they feel is unreasonable and which they believe is based on a perception of risk not backed by evidence, and the lack of organic price premium, both of which are still not addressed in the proposed rule. They added that although the proposed rule does add the possibility of organic insurance based on actuarial information in the future, the likelihood of organic policies based on anything but written agreements in the near term is small. They stated most producers are left with the unenviable choice of insuring under biased and economically untenable written agreements, or insuring without written agreement and facing continued bias against organic farming practices despite the attempt by Congress to eliminate such discrimination, or doing without insurance. They do not believe organic producers should be expected to agree to insurance by written agreement if they are forced to pay more than other producers and receive no benefit from their price premium on claims. One of the commenters stated they, as an organization, would continue to recommend organic producers not agree to insurance by written agreement under these conditions.

Response: The organic premium factor is not dependent on the price received. Premium rates are greatly dependent on yield variability. As stated above, a higher yield variability exists for organic practices than for conventional practices, particularly in catastrophic events. The 1.05 premium adjustment factor currently used for organic practice written agreements reflects the data regarding the yield variability risk for organic farming practices. FCIC is providing the maximum coverage available based on the data it has. As stated above, the premium is based on the risk determined from the data provided to FCIC. Further, FCIC cannot provide separate organic prices until adequate organic price data is obtained. FCIC has contracted studies to help obtain such price data. FCIC sympathizes with the problems faced by organic producers. However, without actuarially sufficient data, FCIC cannot make the suggested changes. FCIC is working as expeditiously as possible to collect this data and hopes to have separate prices for organic crops in the actuarial in the near future. Therefore, no change has been made.

Comment: A commenter stated for certified organic acreage, the provisions in section 37(c) may be a problem for crops like alfalfa, since reporting and crop insurance is different than for a grain crop. The commenter stated producers carry the insurance through the winter for winter kill. They believe provisions for alfalfa and forage crops are needed.

Response: FCIC fails to see why the requirement to have documentation proving the crop is grown organically when it is reported as an organic practice should be a problem for perennial crop producers. Producers of all insured crops must report their practice and provide any necessary documentation, such as contracts, by the acreage reporting date. The commenter failed to provide any information upon which FCIC could make an exception to this requirement for organic crops. No change has been made.

Comment: A commenter stated they had a problem with the provisions in section 37(c) requiring the use of certifying agents for transitional acreage, because many times a decision by a soil consultant is in place until the end of the season (sometimes winter) until certifying agents finally get time to review.

Response: To be insured as an organic practice, there must be evidence that such practice is used. Such evidence is provided by the certifying agent in the organic plan. If the transitional acreage is not included in the organic plan, it would be difficult to verify that an organic practice was used on the transitional acreage. Therefore, no change has been made.

Comment: Many commenters commented on the provisions proposed in section 37(g). Most of the commenters believe the crop insurance policy should provide coverage for contamination by unintentional application or drift of prohibited substances. The commenters provided the following comments and questions: (1) A commenter stated pesticide and genetic drift are among the most pervasive threats faced by sustainable and organic farmers, yet the proposed rule specifically excludes coverage for these risks for organic producers. The commenter believes crop insurance is the only reliable means to spread the risk of pesticide and genetic drift for sustainable and organic farmers, and that spreading the risk is an essential function of crop insurance. The commenter stated section 107 of ARPA requires the Corporation to offer quality loss adjustment coverage for ''identity preserved'' crops on a smaller than unit basis. The commenter stated the most relevant quality loss for many identity preserved crops would be the loss of identity due to the introduction of foreign genetic and chemical materials. The commenter asked if this coverage is currently available, and if not, when it will be made available; (2) A commenter asked what the rationale is behind excluding coverage for contamination and asked if that position is defensible in light of the purposes of the Federal crop insurance program; (3) A

commenter was concerned with the directive that organic farmers establish buffer areas to prevent contamination. The commenter has spent much time working in the area of biotechnology and is aware of the lack of scientific understanding of the mechanisms of drift and how to prevent it; (4) A commenter stated RMA should responsibly address liability issues regarding contamination of organic crops by genetically engineered crops. The commenter stated it is a new concern, with far-reaching consequences for all involved in the production, distribution, marketing and consumption of food. They asked what insurance is available to organic growers in the event of contamination of their crops and from whom it would be available; (5) A few commenters stated over a year ago, the organic community raised the issue of the need for insurance against risks of drift and GMO contamination, which are still not addressed in the proposed rule; (6) A commenter stated failure to insure against a major price risk (drift and GMO contamination) is unfortunate. The commenter understands coverage of this type of loss could be difficult in terms of premium structure and affordability; however, they believe the U.S. government needs to continue to pursue ways to protect certified organic growers from the economic risks of genetic contamination from genetically modified varieties. They believe contamination of a crop in spite of the presence of a buffer zone should be a covered loss under Federal Crop Insurance regulations; (7) A commenter believes failure to cover these perils is discriminatory and indefensible in light of the purposes of the Federal crop insurance program; (8) A few commenters stated the proposed rule specifically excludes insurance for the risks of drift and contamination, despite their growing damage to organic products. They stated this failure to insure against a major price risk is expected, though unfortunate; and (9) A commenter believes the crop insurance policy should provide this coverage for organic producers if it is the result of a natural disaster, the same as it does for conventional producers, because the producers cannot control it if it happens. The commenter added yield loss should be exempted when establishing the crop yield.

Response: FCIC agrees the risk of contamination by application or drift of prohibited substances is a major risk to organic producers and has significant economic implications. Unfortunately, under section 508(a) of the Act, FCIC can only insure losses due to natural causes. It does not have authority under the Act to provide crop insurance coverage for any loss of production directly caused by contamination of prohibited substances because the contamination is the cause that damages the crop and it is not a natural cause, even if the contamination is spread by a natural cause. Section 107 of ARPA states that all the conditions must be must be met for such additional quality adjustment coverage to be provided. While they may meet the condition of identity preserved, organic producers have not demonstrated that they meet all the conditions. If all conditions can be met, the quality loss adjustment will be applicable. In order to qualify for an organic practice, the producer must have an organic plan. If the buffer zone is required in the organic plan, FCIC does not have the authority to change the requirement in the plan. Therefore, concerns with the buffer zone should be directed to the certifying agency. For the reasons stated above, FCIC cannot cover contamination from genetically engineered crops. Such losses are not due to a natural cause. FCIC is unaware of any insurance coverage currently available to cover contamination from genetically engineered crops. While FCIC sympathizes with the organic producers, unless the Act is revised, FCIC is unable to provide coverage for this peril. FCIC cannot exempt yield loss caused by contamination when establishing the crop yield. The Act requires the APH yield be based on the actual production history for the crop, if the crop was produced. Therefore no change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Amended the definition of ''second crop'' to add provisions that allow a replanting of the first crop to be considered a replanted crop if replanting is required or it is specifically made optional in the policy, and the insured elects to replant and insure as the first insured crop. Policies, such as the small grains policy, state that replanting of wheat after the failure of a winter wheat crop is optional, not required. In these circumstances, FCIC does not want to require replanting because the producer paid for a separate endorsement to have the option to replant and continue insurance on a winter wheat basis, replant and insure as a separate spring wheat crop, or continue to care for the damaged winter wheat crop. If the producer elects to replant and insure the crop under the first insured crop policy, such replanting should not be considered as a second crop because the producer does not get an indemnity for the first crop. If the producer elects to replant and insures the replanted crop as a separate spring wheat crop, the replanted crop would be considered a second crop. The definition is also amended to include cover crops planted with the intention of haying, grazing or otherwise harvesting at a later time. The proposed definition included only those cover crops actually hayed, grazed or otherwise harvested. This change will require cover crops that are destroyed prior to being hayed, grazed or otherwise harvested but that are covered under FSA's noninsured crop disaster assistance program (NAP) or receive other USDA benefits associated with forage crops, to be considered a second crop; and

2. Section 15(g) is revised to clarify indemnity payments, prevented planting payments, and premium calculations in other parts of the policy do not conflict with the reductions specified in section 15. This section is also revised to remove the requirement to reduce an indemnity when a volunteer or cover crop is harvested from acreage on which a first crop was planted. Since the volunteer crop or cover crop is not insurable, it could never sustain an insurable loss, which is a prerequisite for an indemnity reduction for the first insured crop. This section is also revised to require the prevented planting payment reduction when a volunteer crop is harvested after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop.

3. Section 15(g)(3)(ii) is revised to clarify that a prevented planting payment reduction will apply if the insured cash rents to another person the acreage for which a prevented planting payment was received. This addition is made to be consistent with the current prevented planting provisions that specify that an insured is not eligible for a prevented planting payment if the insured cash rents the acreage that was prevented from being planted.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The changes that remain in this rule are statutorily mandated.

With respect to the provisions of this rule, it would be contrary to the public interest to delay its implementation.

Further, such changes regarding the inclusion of an informal reconsideration process for determinations of good farming practices and making determinations of good farming practices more objective are in the public interest. This is because these changes provide the producer with a less expensive mechanism to adjudicate disputes regarding good farming practices and benefits both producers and the insurance providers by providing more flexibility in the entities that can evaluate the farming practices used, and setting a standard that reduces the problems caused by a disagreement among experts.

Further, it is in the public interest because the changes regarding the limitation on providing multiple benefits on the same acreage in the same crop year will reduce program costs because producers will no longer be able to collect numerous indemnity payments on the same acreage in cases such as a continuing drought.

The public interest will also be served because this final rule also provides the basis for extending and clarifying coverage for crops produced under organic or sustainable farming practices. This provides producers with more meaningful coverage by eliminating the denial of coverage for failure to use the same good farming practices as used by producers under conventional practices.

In addition, the public interest is served because insurance providers will now be able to verify the cause of loss for prevented planted acreage in a timely manner and ensure that claims are properly paid. This should eliminate a significant program vulnerability and reduce program costs.

The public interest is further served by allowing producer the flexibility to determine which yields will be substituted on an annual basis because it will allow such producers to tailor their coverage to their individual risk management needs, which may change every year.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date of June 30, 2003. This would mean that the affected producers and insurance providers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

List of Subjects in 7 CFR Parts 400, 407, and 457

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and recordkeeping requirements.

Conforming Amendment

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, subpart J to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

Subpart J—Appeal Procedure

■ 2. In § 400.90, revise the definition of ''good farming practices,'' and add the definition of ''insured'';

■ 3. In § 400.91:

■ a. Revise paragraph (a)(2); and

■ b. Revise paragraph (b)(2);

■ 4. In § 400.92, remove paragraph (c);

■ 5. In § 400.93, amend paragraph (a) by removing the second and third sentences;

■ 6. In § 400.95, amend paragraph (a) by removing the words ''or determination regarding good farming practices'' from the first sentence;

■ 7. In § 400.96:

■ a. Remove the paragraph (a) designation and revise the introductory text to read as follows: ''Except as provided in § 400.98, with respect to adverse determinations:'';

■ b. Redesignate paragraphs (a)(1), (2) and (3) as paragraphs (a), (b) and (c), respectively;

■ c. Amend redesignated paragraph (c) by removing the words ''paragraphs (a) and (b) of''; and

■ d. Remove paragraph (b); and

■ 8. Add § 400.98.

The revisions read as follows:

§ 400.90 Definitions.

* * * * *

Good farming practices. For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

Insured. An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year.

* * * * *

§ 400.91 Applicability.

* * * * *

(a) * * *

(1) * * *

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (*see* § 400.98).

* * * * *

(b) * * *

(1) * * *

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

* * * * *

§ 400.98 Reconsideration process.

(a) This reconsideration process only applies to determinations of good farming practices under § 400.91(a)(2).

(b) There is no appeal to NAD of determinations or reconsideration decisions regarding good farming practices.

(c) Only reconsideration is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(d) If the insured seeks reconsideration, the insured must file a written request for reconsideration to the following: USDA/RMA/Deputy Administrator for Insurance Services/ Stop 0805, 1400 Independence Avenue SW., Washington, DC 20250–0801.

(1) A request for reconsideration must be filed within 30 days of receipt of written notice of the determination regarding good farming practices. A request for reconsideration will be considered to have been ''filed'' when personally delivered in writing to FCIC or when the properly addressed request, postage paid, is postmarked.

(2) Notwithstanding paragraph (d)(1) of this section, an untimely request for reconsideration may be accepted and acted upon if the insured can demonstrate a physical inability to timely file the request for reconsideration.

(3) The written request must state the basis upon which the insured relies to show that:

(i) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(ii) All material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless the reconsideration decision is found to be arbitrary or capricious.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, part 407 and 7 CFR part 457 effective for the 2004 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2005 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 9. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

■ 10. Revise the heading of subpart T to read as set forth above.

§ 400.650 [Amended]

■ 11. In § 400.650, remove ''limited coverage'' from the second sentence.

■ 12. In § 400.651:

■ a. Revise the definitions of ''additional coverage'' and ''approved yield'';

■ b. Remove ''limited,'' from the definition of ''administrative fee''; and

■ c. Remove the definition of ''limited coverage''.

The revisions read as follows:

§ 400.651 Definitions.

* * * * *

Additional coverage. A level of coverage greater than catastrophic risk protection.

* * * * *

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

* * * * *

§ 400.652 [Amended]

■ 13. In § 400.652:

■ a. Remove ''‚limited,'' from paragraph (a);

■ b. Remove the words ''Limited and'' from paragraph (b) and capitalize the first letter in the word ''additional''; and

■ c. Remove the words ''limited and'' from paragraph (d).

§ 400.654 [Amended]

■ 14. In § 400.654:

■ a. Remove ''‚limited'' from paragraph (a);

■ b. Remove the words ''limited or'' from paragraph (c)(6); and

■ c. Remove ''‚limited,'' from paragraph (d).

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2004 AND SUCCEEDING CROP YEARS

■ 15. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 16. Amend part 407 by revising the part heading as set forth above.

■ 17. Amend § 407.9, as follows:

■ a. Revise the introductory text of the section;

■ b. Amend section 1—Definitions—by adding definitions of ''agricultural experts,'' ''area,'' ''certifying agent,'' ''conventional farming practice,'' ''cover crop,'' ''double-crop,'' ''first insured crop,'' ''generally recognized,'' ''organic agricultural industry,'' ''organic farming practice,'' ''replanted crop,'' ''second crop'' and ''sustainable farming practice'' and revising the definition of ''good farming practices;''

■ c. Revise section 3(c);

■ d. Remove section 3(d);

■ e. Revise section 16; and

■ f. Add a new section 21 between the first paragraph of section 20 and the example immediately following that paragraph.

The revised and added sections read as follows:

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2004 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Agricultural experts. Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Area. Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

* * * * *

Certifying agent. A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

Conventional farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other reasons related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

* * * * *

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

* * * * *

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

* * * * *

Generally recognized. When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic

agricultural industry for the area or contained in the organic plan that is in accordance with the National Organic Program published in 7 CFR part 205. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

* * * * *

Organic agricultural industry. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic farming practice. A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Replanted crop. The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed, grazed, or otherwise harvested, is considered a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

* * * * *

Sustainable farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

3. Insured and Insurable Acreage.

* * * * *

(c) We will not insure any acreage:

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where you have failed to follow good farming practices for the insured crop;

(3) Of a second crop if you elect not to insure such acreage when there is an insurable loss for planted acreage of a first insured crop and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage in accordance with section 21. In this case:

(i) You must provide written notice to us of your election not to insure acreage of a second crop on or before the acreage reporting date for the second crop if it is insured under this GRP policy, or before planting the second crop if it is insured under any other plan of insurance and if you fail to provide such notice, the second crop acreage will be insured in accordance with policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(4) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 3(c)(4)(i)(A) or (B).

* * * * *

[FCIC Policy]

16. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may:

(a) Except as provided in section 16(b), obtain administrative review of or appeal those determinations in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11.

(b) Request a reconsideration of our determination regarding good farming practices in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against us in the United States district court.

[Reinsured Policy]

16. Determinations.

(a) If you and we fail to agree on any factual determination made by us, the disagreement will be resolved in accordance with the rules of the American Arbitration Association.

(b) Except as provided in section 16(d), you may appeal any determination made by FCIC in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11.

(c) No award determined by arbitration, appeal, administrative review or reconsideration process can exceed the amount of liability established or which should have been established under the policy.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration of this determination in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against FCIC in United States district court. You cannot sue us for determinations of good farming practices.

* * * * *

21. Indemnity and Premium Limitations.

(a) With respect to acreage where you are due a loss for your first insured crop in the crop year, except in the case of double cropping described in section 21(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium for the first insured crop that is commensurate with the amount of the indemnity paid for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 21(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 21(a)(2)(ii).

(b) The reduction in the amount of indemnity and premium specified in section 21(a), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity

paid in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted.

(3) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 21(c).

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 18. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 19. Amend § 457.8, Common Crop Insurance Policy Basic Provisions, as follows:

■ a. Amend section 1 by adding definitions for ''Actual Production History (APH),'' ''actual yield,'' ''agricultural experts,'' ''area,'' ''average yield,'' ''buffer zone,'' ''certified organic acreage,'' ''certifying agent,'' ''conventional farming practice,'' ''cover crop,'' ''double-crop,'' ''first insured crop,'' ''generally recognized,'' ''organic agricultural industry,'' ''organic farming practice,'' ''organic plan,'' ''organic standards,'' ''prohibited substance,'' ''replanted crop,'' ''second crop,'' ''sustainable farming practice'' and ''transitional acreage;'' and revising the definitions of ''approved yield,'' and ''good farming practices;''

■ b. Redesignate sections 3(e) through (h) as sections 3(f) through (i), respectively and add new section 3(e);

■ c. Amend section 9(a)(5) by removing ''or'' at the end of the text;

■ d. Amend section 9(a)(6) by removing the period ''.'' at the end of the text and replacing it with a semicolon '';'';

■ e. Amend section 9(a) by adding new sections 9(a)(7) and (8);

■ f. Amend section 14 by revising (Your Duties) 14(d) and 14(d)(1), redesignating section 14(f) as 14(g) and adding section 14(f);

■ g. Amend section 14 (Our Duties) by revising sections 14(a), and 14(a)(1) and (2);

■ h. Amend section 15 by revising the section heading, redesignating section 15(e) as section 15(j), and adding new sections 15(e) through (i);

■ i. Amend the first sentence of section 17(c) to add the words ''except as specified in section 15(f)'' after the word ''acreage'' and before the period at the end of the sentence;

■ j. Amend section 17(e)(1) by removing ''or (5)'' at the end of the first sentence;

■ k. Amend the first sentence of section 17(e)(1)(i)(A) by replacing the words ''substitute crop other than an approved cover'' with ''second'' and adding ''unless you meet the double cropping requirements in section 17(f)(4)'' before the closing parentheses;

■ l. Revise sections 17(f)(4) and (5);

■ m. Remove current section 17(f)(6) and redesignate sections 17(f)(7) through (12) as 17(f)(6) through (11) respectively;

■ n. Revise section 20. Appeals (For FCIC policies);

■ o. Revise section 20. Arbitration (For reinsured policies);

■ p. Amend section 34(c)(1) by removing ''and'' at the end of the text;

■ q. Amend section 34(c)(2) by replacing the period at the end of the text with ''; and'';

■ r. Amend section 34(c) by adding section 34(c)(3);

■ s. Revise section 36; and

■ t. Add a new section 37.

The revised and added sections read as follows:

§ 457.8 The application and policy.

* * * * *

Terms and Conditions

Basic Provisions

1. Definitions.

* * * * *

Actual Production History (APH). A process used to determine production guarantees in accordance with 7 CFR part 400, subpart (G).

Actual yield. The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres.

* * * * *

Agricultural experts. Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

* * * * *

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under section 36, revisions according to section 3(d) or (e), or other limitations according to FCIC approved procedures applied when calculating the approved yield.

* * * * *

Area. Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

* * * * *

Average yield. The yield, calculated by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, prior to any adjustments, including those elected under section 36, revisions according to section 3(d) or (e), or other limitations according to FCIC approved procedures.

* * * * *

Buffer zone. A parcel of land, as designated in your organic plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices, and used to minimize the possibility of unintended contact by prohibited substances or organisms.

* * * * *

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

Certifying agent. A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

* * * * *

Conventional farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil

improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

* * * * *

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

* * * * *

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

* * * * *

Generally recognized. When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

* * * * *

Organic agricultural industry. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic farming practice. A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

Organic plan. A written plan, in accordance with the National Organic Program published in 7 CFR part 205, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

Organic standards. Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205.

* * * * *

Prohibited substance. Any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional or buffer zone acreage. Lists of such substances are contained at 7 CFR part 205.

Replanted crop. The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed, grazed, or otherwise harvested, is considered a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured. Notwithstanding the references to haying and grazing as harvesting in these Basic Provisions, for the purpose of determining the end of the insurance period, harvest of the crop will be as defined in the applicable Crop Provisions.

* * * * *

Sustainable farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

Transitional acreage. Acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(e) Unless you meet the double cropping requirements contained in section 17(f)(4), if you elect to plant a second crop on acreage where the first insured crop was prevented from being planted, you will receive a yield equal to 60 percent of the approved yield for the first insured crop to calculate your average yield for subsequent crop years (not applicable to crops if the APH is not the basis for the insurance guarantee). If the unit contains both prevented planting and planted acreage of the same crop, the yield for the unit will be determined by:

(1) Multiplying the number of insured prevented planting acres by 60 percent of the approved yield for the first insured crop;

(2) Adding the totals from section 3(e)(1) to the amount of appraised or harvested production for all of the insured planted acreage; and

(3) Dividing the total in section 3(e)(2) by the total number of acres in the unit.

* * * * *

9. Insurable Acreage.

(a) * * *

* * * * *

(7) Of a second crop if you elect not to insure such acreage when there is an insurable loss for planted acreage of a first insured crop and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage in accordance with section 15. In this case:

(i) You must provide written notice to us of your election not to insure acreage of a second crop at the time the first insured crop acreage is released by us or, if the first insured crop is insured under the Group Risk Protection Plan of Insurance (7 CFR part 407), before the second crop is planted, and if you fail to provide such notice, the second crop acreage will be insured in accordance with policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(8) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 9(a)(8)(i)(A) or (B).

* * * * *

14. Duties in the Event of Damage or Loss.

Your Duties—

* * * * *

(d) You must:

(1) Provide a complete harvesting and marketing record of each insured crop by

unit including separate records showing the same information for production from any acreage not insured. In addition, if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e)(2) (for example, you planted a second crop on acreage where a first insured crop had an insurable loss and you do not qualify for the double cropping exemption), you must provide separate records of production from such acreage for all insured crops planted on the acreage. For example, if you have an insurable loss on 10 acres of wheat and subsequently plant cotton on the same 10 acres, you must provide records of the wheat and cotton production on the 10 acres separate from any other wheat and cotton production that may be planted in the same unit. If you fail to provide such separate records, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage or, if you fail to provide the records necessary to allow allocation, the reduction specified in section 15 will apply; and

* * * * *

(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after:

(1) The final planting date, if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable; or

(2) You determine you will not be able to plant the insured crop within any applicable late planting period.

* * * * *

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after the later of:

(1) We reach agreement with you;

(2) Completion of arbitration, reconsideration of determinations regarding good farming practices or any other appeal that results in an award in your favor, unless we exercise our right to appeal such decision; or

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(e) With respect to acreage where you have suffered an insurable loss to planted acreage of your first insured crop in the crop year, except in the case of double cropping described in section 15(h):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium for the first insured crop that is commensurate with the amount of the indemnity paid for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 15(e)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 15(e)(2)(ii).

(f) With respect to acreage where you were prevented from planting the first insured crop in the crop year, except in the case of double cropping described in section 15(h):

(1) If a second crop is not planted on the same acreage for harvest in the same crop year, you may collect a prevented planting payment that is equal to 100 percent of the prevented planting payment for the acreage for the first insured crop; or

(2) If a second crop is planted on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Provided the second crop is not planted on or before the final planting date or during the late planting period (as applicable) for the first insured crop, you may collect a prevented planting payment that is 35 percent of the prevented planting payment for the first insured crop; and

(ii) Be responsible for a premium for the first insured crop that is commensurate with the amount of the prevented planting payment paid for the first insured crop.

(g) The reduction in the amount of indemnity or prevented planting payment and premium specified in sections 15(e) and 15(f), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity or prevented planting payment made in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted or was prevented from being planted, as applicable.

(3) For prevented planting only:

(i) If a volunteer crop or cover crop is hayed, grazed or otherwise harvested from the same acreage, after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop in the same crop year; or

(ii) If you receive cash rent for any acreage on which you were prevented from planting.

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped;

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it; and

(5) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop.

(i) The receipt of a full indemnity or prevented planting payment on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 15(h).

* * * * *

17. Prevented Planting.

* * * * *

(f) * * *

(1) * * *

(2) * * *

(3) * * *

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year, excluding share arrangements, unless:

(i) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry in the area to plant the second crop for harvest following harvest of the first insured crop, and additional coverage insurance offered under the authority of the Act is available in the county for both crops in the same crop year;

(ii) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it; and

(iii) The amount of acreage you are double cropping in the current crop year does not exceed the number of acres for which you provide the records required in section 17(f)(4)(ii);

(5) On which the insured crop is prevented from being planted, if:

(i) Any crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable, unless you meet the double cropping requirements in section 17(f)(4), or unless the crop planted was a cover crop; or

(ii) Any volunteer or cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period or on or prior to

the final planting date if no late planting period is applicable;

* * * * *

[For FCIC Policies]

20. Appeals and Administrative Review.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may:

(a) Except as provided in section 20(b), obtain an administrative review of or appeal those determinations in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11. Disputes regarding the amount of assigned production for uninsured causes for your failure to use good farming practices must be resolved under this subsection.

(b) Request a reconsideration of our determination regarding good farming practices in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against us in the United States district court.

[For Reinsured Policies]

20. Arbitration, Appeals, and Administrative Review.

(a) If you and we fail to agree on any factual determination made by us, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Disputes regarding the amount of assigned production for uninsured causes for your failure to use good farming practices must be resolved under this subsection.

(b) Except as provided in section 20(d), you may appeal any determination made by FCIC in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11.

(c) No award determined by arbitration, appeal, administrative review or reconsideration process can exceed the amount of liability established or which should have been established under the policy.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration of this determination in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against FCIC in the United States district court. You cannot sue us for determinations of good farming practices.

* * * * *

34. Unit Division.

* * * * *

(c) * * *

(3) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, separate optional units may be established for acreage of the insured crop grown and insured under an organic farming practice. Certified organic, transitional and buffer zone acreages do not individually qualify as separate units. (See section 37 for additional provisions regarding acreage insured under an organic farming practice).

* * * * *

36. Substitution of Yields.

(a) When you have actual yields in your production history database that, due to an insurable cause of loss, are less than 60 percent of the applicable transitional yield (T-yield) you may elect, on an individual actual yield basis, to exclude and replace one or more of any such yields within each database.

(b) Each election made in section 36(a) must be made on or before the sales closing date for the insured crop and each such election will remain in effect for succeeding years unless cancelled by the applicable cancellation date for the succeeding crop year. If you cancel an election, the actual yield will be used in the database. For example, if you elected to substitute yields in your database for the 1998 and 2000 crop year, for any subsequent crop year, you can elect to cancel the substitution for either or both years.

(c) Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the crop year in which the yield is being replaced (For example, if you elect to exclude a 2001 crop year actual yield, the T-yield in effect for the 2001 crop year in the county will be used. If you also elect to exclude a 2002 crop year actual yield, the T-yield in effect for the 2002 crop year in the county will be used). The replacement yields will be used in the same manner as actual yields for the purpose of calculating the approved yield.

(d) Once you have elected to exclude an actual yield from the database, the replacement yield will remain in effect until such time as that crop year is no longer included in the database unless this election is cancelled in accordance with section 36(b).

(e) Although your approved yield will be used to determine your amount of premium owed, the premium rate will be increased to cover the additional risk associated with the substitution of higher yields.

* * * * *

37. Organic Farming Practices.

(a) In accordance with section 8(b)(2), insurance will not be provided for any crop grown using an organic farming practice, unless the information needed to determine a premium rate for an organic farming practice is specified on the actuarial table, or insurance is allowed by a written agreement.

(b) If insurance is provided for an organic farming practice as specified in section 37(a), only the following acreage will be insured under such practice:

(1) Certified organic acreage;

(2) Transitional acreage being converted to certified organic acreage in accordance with an organic plan; and

(3) Buffer zone acreage.

(c) On the date you report your acreage, you must have:

(1) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement);

(2) For transitional acreage, a certificate as described in section 37(c)(1), or written documentation from a certifying agent indicating an organic plan is in effect for the acreage; and

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

(d) If you claim a loss on any acreage insured under an organic farming practice, you must provide us with copies of the records required in section 37(c).

(e) If any acreage qualifies as certified organic or transitional acreage on the date you report such acreage, and such certification is subsequently revoked by the certifying agent, or the certifying agent no longer considers the acreage as transitional acreage for the remainder of the crop year, that acreage will remain insured under the reported practice for which it qualified at the time the acreage was reported. Any loss due to failure to comply with organic standards will be considered an uninsured cause of loss.

(f) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices will not be an insured peril on any certified organic, transitional or buffer zone acreage.

(g) In addition to the provisions contained in section 17(f), prevented planting coverage will not be provided for any acreage based on an organic farming practice in excess of the number of acres that will be grown under an organic farming practice and shown as such in the records required in section 37(c).

(h) In lieu of the provisions contained in section 17(f)(1) that specify prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same practice that is planted in the field, prevented planting acreage will be considered as organic practice acreage if it is identified as certified organic, transitional, or buffer zone acreage in the organic plan.

Signed in Washington, DC, on June 17, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–15627 Filed 6–18–03; 3:42 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–2 FR]

Tart Cherries Grown in the States of Michigan, *et al.*; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate for tart cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0019 per pound. It also increases the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.000875 to $0.0019 per pound. The single assessment rate for all assessable tart cherries was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2002–2003 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1, 2002, and ends June 30, 2003. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: This final rule becomes effective: June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; 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, or 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 final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry 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 would be applicable to all assessable tart cherries beginning July 1, 2002, and continue until amended, suspended, or terminated. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this final 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 final rule increases the assessment rate established for the Board for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0019 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would also be increased from $0.000875 to $0.0019 per pound.

The tart cherry marketing order provides authority for the Board, 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 Board are producers and handlers of tart cherries. They are familiar with the Board'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 or rates as appropriate. Assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 fiscal period, the Board recommended, and USDA approved, assessment rates that will continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased uniform rate is expected to generate enough income to meet the Board's operating expenses in 2002–2003.

The Board met on January 24, 2002, and unanimously recommended 2002–2003 expenditures of $522,500. The Board also recommended that an assessment rate of $0.0019 be established for all tart cherry products if an amendment to do so passed in a May 2002 referendum of producers and processors. The amendment passed and was finalized by USDA on August 8, 2002 (67 FR 51698). The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products. Prior to the amendment passing in referendum, USDA issued a proposed rule on June 10, 2002 (67 FR 39637) proposing a dual assessment rate at higher amounts ($0.0021 and $0.00105, respectively, for high and low value cherry products) since the authority for a uniform assessment rate amendment was not yet effective. A rule withdrawing that proposal was published on April 2, 2003 (68 FR 15971). This proposal reflects the amended provisions and the Board's January 24, 2002, recommendation.

The amended assessment provisions allow the Board to recommend a uniform single assessment rate for all assessable tart cherries handled, or variable rates depending on the quantities and values of the cherries used in the various products. A two-tiered assessment rate scheme may be appropriate in some years, but it may not be in others.

The amended order specifically provides that under § 930.41(f)(1) and (2) the established assessment rates may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board may consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products. The Board considered the above items and decided that one assessment rate should be recommended for all assessable tart cherries for the 2002–2003 fiscal period.

According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This derives from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate. According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 gallon conversion for the product, as has been used on the west coast, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001–02 was about $0.60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001–02 that the price for five plus one product was $0.67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and five pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since juice, juice concentrate, and puree are not considered to be low value products at this time, the Board considers one assessment to be appropriate. It is important to understand that product is moved around between production areas and may be converted into puree or concentrate at a later date. The market drives the processing of these various products each season.

In comparing the prices of juice, juice concentrate, and puree with the 5 plus 1 product, the Board determined that current prices for these products are similar. The information received from the Board indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of this season's 2002–2003 short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than are the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2002–03 fiscal period.

Last year's budgeted expenditures were $442,500. The recommended assessment rate of $0.0019 is higher than the current rates of $0.00175 for cherries used in the production of other than juice, juice concentrate, or puree products, and $0.000875 for cherries used for juice, juice concentrate or puree products.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts, respectively. As discussed below, the Board's staff has taken steps to reduce actual expenditures for 2002–03 due to the assessment revenue shortfall. The recommended assessment rate of $0.0019 is higher than the current rates of $0.00175 and $0.000875, respectively. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which significantly reduced the crop. The tart cherry industry is expected to only produce 60 million pounds. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and used reserve funds to continue administrative operations this season. Therefore, total assessment income for 2002–2003 is estimated at $114,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $233,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

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

Although the assessment rate is effective for an indefinite period, the Board 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 Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2002–2003 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

A minor change is made to the provisions of § 930.200 as proposed for clarification purposes.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs

(Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2002–2003 expenditures of $522,500 and assessment rate increases from $0.00175 to $0.0019 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.000875 to $0.0019 per pound for cherries utilized for juice, juice concentrate, or puree.

This final rule increases the assessment rate established for the Board and collected from handlers for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products to $0.0019 per pound. The quantity of assessable tart cherries expected to be produced during the 2002–2003 crop year was estimated at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which has significantly reduced the crop. The tart cherry industry is expecting to only produce 60 million pounds during 2002–03. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level. It also determined that a single uniform assessment rate for assessable tart cherries was appropriate.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total production. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

A review of historical information and preliminary information pertaining to the 2002–2003 fiscal period indicates that the grower price could range between $0.448 and $0.45 cents per pound of tart cherries. This is a high price due to the short crop this year. Therefore, the estimated assessment revenue for the 2002–2003 fiscal period as a percentage of total grower revenue could be less than one-half of one percent.

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 24, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses and no comments were received.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry 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.

A proposed rule concerning this action was published in the **Federal Register** on May 22, 2003 (68 FR 27943). Copies of the rule were mailed or sent via facsimile to all Board members and tart cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 10-day comment period ending June 2, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

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 matters presented, including the information and recommendation submitted by the Board 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2002–2003

fiscal period began on July 1, 2002, and ends on June 30, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 10-day comment period was provided in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2002, the assessment rate imposed on handlers shall be $0.0019 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products.

Dated: June 19, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–16138 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 02–127–2]

Ports Designated for Exportation of Livestock; Portland, OR

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of a direct final rule.

SUMMARY: This document withdraws the direct final rule that notified the public of our intention to amend the ''Inspection and Handling of Livestock for Exportation'' regulations by designating Portland International Airport in Portland, OR, as a port of embarkation and B Bar C Ranch, in Gervais, OR, and Pony World Farm in Portland, OR, as export inspection facilities for that port. This action is necessary because we received a written adverse comment in response to the direct final rule.

DATES: The direct final rule is withdrawn as of June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

In a direct final rule published in the **Federal Register** on May 19, 2003 (68 FR 26990–26991, Docket No. 02–127–1), we notified the public of our intention to amend the ''Inspection and Handling of Livestock for Exportation'' regulations by designating Portland International Airport in Portland, OR, as a port of embarkation and B Bar C Ranch, in Gervais, OR, and Pony World Farm in Portland, OR, as export inspection facilities for that port.

We solicited comments concerning the direct final rule for 30 days ending June 18, 2003. We stated that the effective date of the direct final rule would be 60 days after publication of the direct final rule in the **Federal Register**, unless we received a written adverse comment or a written notice of intent to submit an adverse comment. We also stated that if we received any written adverse comment or any written notice of intent to submit an adverse comment, we would publish a notice in the **Federal Register** withdrawing the direct final rule before the scheduled effective date and would publish a proposed rule for public comment.

We received one written adverse comment. Therefore, we are withdrawing the direct final rule and, at a later date, we will publish a proposed rule in the **Federal Register**.

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 19th day of June, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–16039 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 320 and 381

[Docket No. 01–034N]

Need To Complete New Registration Form and Importance of Compliance With Recordkeeping and Registration Requirements Under the Federal Meat and Poultry Products Inspection Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy statement and request for comments.

SUMMARY: Since 1970, FSIS has required registration by: Meat brokers; poultry products brokers; renderers; animal food manufacturers; wholesalers; warehousemen; and persons that engage in the business of buying, selling, transporting in commerce, or importing, any dead, dying, disabled, or diseased livestock (that is, cattle, sheep, swine, goats, horses, mules, or other equines) or poultry, or parts of the carcasses of livestock or poultry that have died otherwise than by slaughter. Also since 1970, FSIS has required these parties, all official establishments, and carriers and importers of poultry or livestock carcasses or parts or products of poultry or livestock carcasses to keep business records and to make such records available to FSIS employees upon request. Registration information and business records are critical in any FSIS investigation related to public health, food safety, or misbranding of meat or poultry products. For example, should Bovine Spongiform Encephalopathy (BSE), a neurogenetive disease in cattle, be introduced in the United States, registration information and business records will be crucial in tracing the source of BSE and in preventing its spread. FSIS intends to increase its enforcement of the registration and recordkeeping requirements to ensure that all businesses subject to the Federal Meat Inspection Act and Federal Poultry Products Inspection Act that are required to be registered with FSIS and/or to maintain business records are properly doing so.

In this notice, FSIS is also informing the public that the Agency has developed a new registration form. Because this form requires that registrants provide certain information that was not required on the previous form, all parties required to register, including those that are currently registered, must complete the new form and submit it to FSIS. Parties must

submit the new registration form to FSIS by March 22, 2004.

DATES: Comments may be submitted by August 25, 2003. The new registration form will be available by December 22, 2003. All parties required to register with FSIS, including those currently registered, must complete the new registration form and submit it to FSIS by March 22, 2004.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 01–034N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this document will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday. When the new registration form becomes available, parties can access the form over the Internet at: *http://www.fsis.usda.gov/fsisforms/*. To obtain a copy of the new registration form, parties may also write to USDA, FSIS, Program Evaluation, Enforcement and Review (PEER), Evaluation and Enforcement Division (EED), 300 West End Court Building, 1255 22nd Street NW., Room 300, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Dr. Arshad Hussain, Division Director, Data Analysis and Statistical Support Staff, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Recordkeeping Requirements

In 1967, the Federal Meat Inspection Act (FMIA) was amended to add section 202 (21 U.S.C. 642), which requires that certain parties keep records that fully and correctly disclose all transactions involved in their businesses related to cattle, sheep, swine, goats, horses, mules, or other equines, their carcasses, parts or products of such animal carcasses for use as human or animal food. Similarly, in 1968, the Poultry Products Inspection Act (PPIA) was amended, including section 11(b) (21 U.S.C. 460(b)), which requires that certain parties keep such records as are properly necessary for the effective enforcement of the PPIA, in order to protect the American consumer against adulterated or misbranded poultry and poultry products. These provisions of the FMIA and PPIA require that the following parties keep business records: Any persons, firms, or corporations that engage in the business of slaughtering any livestock (as enumerated above) or poultry, or preparing or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food; any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers or poultry products brokers, wholesalers, or otherwise), or transporting, or storing, or importing any livestock or poultry carcasses or parts or products of these carcasses; and any persons, firms, or corporations that engage in business as renderers, or engage in the business of buying, selling, or transporting, or importing any dead, dying, disabled, or diseased (referred to as 4-D) livestock or poultry or parts of the carcasses of such livestock or poultry that have died otherwise than by slaughter.

In addition, those sections of the FMIA and PPIA require that, at all reasonable times, upon notice by a duly authorized representative of the Secretary of Agriculture (for example, an FSIS employee), these parties must afford the USDA representative access to their places of business and the opportunity to examine the facilities, inventory, and records and to copy all their records.

Section 11(b) of the PPIA further requires that the businesses listed above which are subject to it retain such records for the period of time prescribed by the poultry products inspection regulations, not to exceed two years, unless otherwise directed by Secretary of Agriculture for good cause shown. Similarly, section 202 of the FMIA provides that required records must be maintained for the period of time prescribed by the meat inspection regulations.

Regulations implementing these recordkeeping requirements were first published in 1970. The current regulations (9 CFR 320.1(b) and 381.175(b)) list the types of records, including, among other records, the bills of sale, invoices, bills of lading, and receiving and shipping papers, that must be maintained; the types of transactions for which records must be maintained, including purchasing, selling, shipping, receiving, transporting, or otherwise handling any livestock, livestock carcass or part thereof, meat or meat food product, poultry, or poultry carcass or part or product thereof; and the information about the transaction that the records must include.

Consistent with the provisions of the FMIA and the PPIA, §§ 320.4 and 381.178 of the FSIS' regulations provide that, upon presentation of official credentials by an FSIS employee (or any authorized USDA representative) during ordinary business hours, businesses that are required to maintain records must permit the FSIS employee to enter their place of business and examine and copy the records that are required to be kept pursuant to these regulations.

Under sections 320.3 and 381.177 of the regulations, records required to be kept must be retained for at least two years after December 31 of the year in which the transaction to which they relate occurred. The regulations also require that records be retained for longer periods if the Administrator of FSIS requires their retention for purposes of any investigation or litigation under the FMIA or PPIA. In these situations, the Administrator is to provide written notice of a longer retention period to the person required to keep these records.

Sections 320.2 and 381.176 of the regulations require that the parties that are required to maintain the records at the place they conduct business that is subject to the FMIA or PPIA, unless they conduct their business in multiple locations. If they conduct their business in multiple locations, businesses can maintain their records at their headquarters' office. When records are not in use, the regulations require that they be kept in a safe place at the required location.

Section 11 (21 U.S.C. 1040) of the Egg Products Inspection Act requires that persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in commerce or holding such articles so received, and all egg handlers, maintain records concerning their receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them. FSIS' implementing regulations are in 9 CFR 590.200. During its continuous inspection at official plants processing egg products, FSIS ensures that these plants comply with the recordkeeping requirements. FSIS is also responsible for enforcing the recordkeeping requirements for other businesses engaged in transporting, shipping, or receiving egg products in commerce or businesses engaged in holding these products. In this notice, FSIS is not focusing on egg products businesses because the recordkeeping requirements in the egg products inspection regulations are different from those in the meat and poultry products inspection regulations. In addition, unlike certain businesses subject to the FMIA and PPIA, egg products businesses are not required to register with FSIS. Furthermore, FSIS is developing a proposed rule on shell eggs and egg products that will

specifically address recordkeeping requirements.

Congress passed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (''the Bioterrorism Act'') (Pub. L. 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act provides that the Secretary of Health and Human Services (HHS) may require the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive hold, or import food for human or animal consumption in the United States. On May 9, 2003, the Food and Drug Administration (FDA) proposed regulations that would implement these recordkeeping requirements (68 FR 25188). The recordkeeping requirements that will apply under the Bioterrorism Act will not affect the recordkeeping requirements in FSIS'' regulations. Therefore, even after the Bioterrorism Act's recordkeeping requirements take effect, the recordkeeping requirements in FSIS'' regulations will continue to apply to the parties listed above.

Registration Requirements

The FMIA and PPIA were also amended in 1967 and 1968, respectively, to add sections 203 (21 U.S.C. 643) and 11(c) (21 U.S.C. 460(c)). These provisions prohibit any person, firm, or corporation from engaging in commerce as a meat or poultry products broker, renderer, animal food manufacturer, wholesaler, or public warehouseman, or from buying, selling, or transporting, or importing any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of livestock or poultry that died otherwise than by slaughter unless they have registered their business as required by the regulations.

Regulations implementing registration requirements were first published in 1970. Sections 320.5 and 381.179 of the current regulations require that the parties listed in the preceding paragraph register with FSIS, unless these parties conduct business only at an official establishment where meat or poultry inspection is maintained.

According to the regulations, parties required to register with FSIS must do so by filing out a form and must provide current and correct information to FSIS, including their name, the address of all locations at which they conduct the businesses that require them to register, and all trade or business names under which they conduct these businesses.

FSIS has developed a new registration form. In addition to requiring the name and addresses of locations at which registrants conduct business, the form requires that parties disclose the form of their organization (*e.g.*, individually owned or partnership), the nature of their business (*e.g.*, meat or meat products or poultry or poultry products), and the type of business they are engaged in (*e.g.*, domestic broker, import broker, warehouseman, etc). The form also requires that registrants provide their phone number and e-mail address and the hours of operation of any of their subsidiaries, branches, or divisions that conduct the businesses that require them to register. According to the regulations, parties required to register with FSIS must do so within 90 days after they begin to engage in any of the businesses that require them to register.

FSIS' new registration form will be available for use by December 22, 2003. Because this form requires that registrants provide certain information that was not required on the previous form, including e-mail address, phone number, and subsidiaries'' hours of operation, all parties required to register, including those that are currently registered, must complete the new form and submit it to FSIS. Parties must submit the form to FSIS by March 22, 2004.

The registration form can be obtained over the Internet at: *http://www.fsis.usda.gov/fsisforms/*. To obtain the form, parties can also write to USDA, FSIS, Program Evaluation, Enforcement and Review (PEER), Evaluation and Enforcement Division (EED), 300 West End Court Building, 1255 22nd Street, NW., Room 300, Washington, DC 20250–3700. The FSIS regulations provide a different mailing address for obtaining the registration form, and state that the registration form can be obtained from ''Compliance Programs, Regulatory Programs'' (§§ 320.5(a) and 381.179(a)). FSIS intends to update this information in a future rule. The form will also be available from FSIS personnel that visit businesses required to register. Once parties complete the form, they should mail it to USDA, FSIS, Program Evaluation, Enforcement and Review (PEER), Evaluation and Enforcement Division (EED), 300 West End Court Building, 1255 22nd Street, NW., Room 300, Washington, DC 20250–3700 (the same address as for obtaining forms) or fax it to Director, Evaluation and Enforcement Division (EED) at (202) 418–8941.

The regulations require that, whenever any change is made in the registrant's name, business address, or any trade or business name under which it conducts its business, the registrant must report such change in writing to the Administrator within 15 days after making the change.

The Bioterrorism Act includes a provision that requires the Secretary of HHS to develop regulations mandating domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States to register with the FDA by December 12, 2003. On February 3, 2003, FDA proposed regulations that would implement these registration requirements (68 FR 5378). The registration requirements that will apply under the Bioterrorism Act will not replace the registration requirements in FSIS' regulations. Therefore, even after the Bioterrorism Act's registration requirements take effect, the registration requirements in FSIS' regulations will continue to apply to the parties listed above.

Bovine Spongiform Encephalopathy

Bovine Spongiform Encephalopathy (BSE), commonly referred to as ''Mad Cow Disease,'' is a slowly progressive degenerative disease that affects the central nervous system (CNS) of adult cattle. BSE belongs to the family of diseases known as the transmissible spongiform encephalopathies (TSEs). Other TSEs include scrapie in sheep and goats, transmissible mink encephalopathy, feline spongiform encephalopathy, chronic wasting disease (CWD) in deer and elk, and in humans, kuru, classic Creutzfeldt-Jakob Disease (CJD), Gerstmann-Straussler-Scheinker syndrome, fatal familial insomnia, and variant Creutzfeldt-Jakob Disease (vCJD).

The agent that causes BSE and other TSEs has yet to be fully characterized. There are three main theories on the nature of the BSE agent: (1) The agent is a virus with unusual characteristics; (2) the agent is a prion—an abnormal form of a normal protein known as cellular prion protein; and (3) the agent is a virino—an ''incomplete'' virus composed of nucleic acid protected by host proteins. The BSE agent is highly resistant to heat, ultraviolet light, ionizing radiation, and common disinfectants that normally inactivate viruses or bacteria. Scientific experts believe that prions most likely cause BSE and other TSEs.

BSE was first diagnosed in 1986 in the United Kingdom (U.K.) and since then has been confirmed in native-born cattle in many other European countries and several countries outside Europe. This animal disease is most likely spread by feeding the rendered parts of cattle infected with the BSE agent to other cattle in the form of meat and bone meal. No cases of BSE have been

detected in the U.S. despite active surveillance for the disease since May 1990.

In 1996, a newly recognized form of the human disease CJD, called variant CJD (vCJD), was reported in 10 patients in the U.K. vCJD is a chronic, neurodegenerative disease that affects humans. Scientific and epidemiological studies have linked vCJD to exposure to BSE, probably through human consumption of beef products contaminated with the agent that causes BSE.

Until recently, vCJD had not been detected in the U.S. In April 2002, the Florida Department of Health and the Centers for Disease Control and Prevention (CDC) began investigating a likely case of vCJD in a citizen of the U.K. living in Florida. In October 2002, CDC reported the investigation of this case and stated that it represents the first probable vCJD case in a U.S. resident (CDC, *Morbidity and Mortality Weekly Report,* 51(41): 927–929, 2002). CDC believes, however, that the patient was exposed to the BSE agent while living in the U.K. This is likely to be the case, as the disease is thought to have a long incubation period and the appearance of symptoms does not mean that exposure was recent.

Surveillance data from European countries in which BSE has been detected indicate that cattle with clinical signs of a central nervous system (CNS) disorder, ''dead'' cattle (*i.e.*, died otherwise than by slaughter), and cattle that cannot rise from a recumbent position (*i.e.*, nonambulatory, cattle commonly referred to as ''downer'' cattle in the U.S.), have a greater incidence of having BSE than other cattle. The FSIS regulations prohibit for use as human food cattle with clinical signs of a CNS disorder or certain infectious or parasitic diseases, or that are in a dying condition or that died otherwise than by slaughter (§§ 309.3, 309.4). All seriously crippled cattle and cattle commonly termed ''downers'' presented for slaughter are automatically suspected of being affected with a disease or condition that may require condemnation of the animal, in whole or in part, and are identified as ''U.S. Suspects'' (§ 309.2(b)). Such cattle are examined at ante-mortem inspection by an FSIS veterinarian, and a record of the veterinarian's clinical findings accompanies the carcass to post-mortem inspection if the animal is not condemned on ante-mortem inspection. Post-mortem inspections on the carcasses of U.S. Suspects cattle are performed by a veterinarian rather than a food inspector, and the results of this inspection are recorded. U.S. Suspects, unless otherwise released pursuant to § 309.2(p), must be set apart and slaughtered separately (§ 309.2(n)). If, on post-mortem inspection, the meat and meat food products from such cattle are found to be otherwise not adulterated, such products may be used for human food (§ 311.1).

Surveillance for BSE in Europe has shown that the typical clinical signs associated with BSE cannot always be observed in nonambulatory (downer) cattle infected with BSE because the signs of BSE often cannot be differentiated from the typical clinical signs of the many other diseases and conditions affecting downer cattle. Thus, if BSE were present in the U.S., it is possible that downer cattle infected with BSE could be presented for slaughter, and, if the clinical signs of the disease were not obvious, pass ante-mortem inspection. These cattle could then be slaughtered, and, if they pass post-mortem inspection, the meat and meat food products from such cattle could be used for human food. However, the BSE agent has not been detected in muscle tissue of infected cattle. Tissues that have been found to contain high levels of the agent that causes BSE in BSE-infected cattle—such as the brain tissue, the spinal cord, and the retina of the eye—could possibly cross-contaminate muscle tissues with the BSE agent during slaughter and processing.

The U.S. government has implemented a number of measures to prevent BSE from entering the U.S. and to prevent the spread of the disease should it be introduced in the U.S. For example, since 1989, the USDA's Animal and Plant Health Inspection Service (APHIS) has prohibited the importation of live cattle and certain cattle products, including rendered protein products, from countries where BSE is known to exist. In 1997, because of concerns about widespread risk factors and inadequate surveillance for BSE in many European countries, these importation restrictions were extended to include all of the countries in Europe. On December 7, 2000, APHIS prohibited all imports of rendered animal protein products, regardless of species, from BSE-restricted countries because of concern that feed intended for cattle may have been cross-contaminated with the BSE agent.

In addition, APHIS leads an ongoing, comprehensive, interagency surveillance system for BSE in the U.S. and, in cooperation with FSIS, has drafted an emergency response plan to be used in the event that BSE is identified in the U.S. Other Federal agencies also have contingency plans that work in concert with the USDA plan.

In 1997, the Food and Drug Administration (FDA) prohibited the use of most mammalian protein in the manufacture of animal feeds given to cattle and other ruminants (21 CFR 589.2000). Firms must keep specified records on the manufacture of their feed, must have processes in place to prohibit co-mingling of ruminant feed with non-ruminant feed, which may contain materials prohibited in ruminant feed, and must ensure that non-ruminant feed containing materials prohibited in ruminant feed is labeled conspicuously with the statement, ''*Do not feed to cattle and other ruminants.*'' These regulations are intended to prevent the introduction and spread of BSE in U.S. cattle through feed contaminated with the BSE agent.

In addition, the CDC monitors the incidence of CJD in the U.S. by analyzing death certificate information from multiple-cause-of-death data compiled by the National Center for Health Statistics. This information is also used to search for possible cases of vCJD in the U.S.

In 1998, USDA entered into a cooperative agreement with Harvard University's School of Public Health to conduct an analysis and evaluation of the current measures implemented by the U.S. government to prevent the entry and spread of BSE in U.S. cattle herds and to reduce the potential for exposure of Americans to the BSE agent. The Harvard study identifies three pathways or practices that could contribute the most to the spread of BSE and the amount of potentially dangerous tissue in the human food supply: (1) Noncompliance with the FDA feed ban, including misfeeding on the farm and the mislabeling of feed and feed products prohibited for consumption by cattle; (2) unsafe disposition of cattle that die on the farm; and (3) inclusion of high-risk tissue, such as brain and spinal cord, in edible products. With regard to the second pathway listed, a potential use for cattle that die on the farm otherwise than by slaughter would be for rendering as non-ruminant animal feed since rendered product from animals that die otherwise than by slaughter is prohibited for use as human food but may be used to produce animal feed.

On January 17, 2002, FSIS announced the availability of a paper on its current thinking on possible actions to minimize human exposure to meat products from cattle that could contain the infective agent that causes BSE (67 FR 2399). This paper is available on the

FSIS web site at *http://www.fsis.usda.gov/oa/topics/BSE_Thinking.pdf* and *http://www.fsis.usda.gov/oa/topics/BSE_thinking.htm*.

In this paper, FSIS stated that it planned to increase its enforcement of recordkeeping and registration requirements for renderers and persons who engage in the business of buying, selling, and transporting 4–D livestock or parts of the carcasses of any such livestock that died otherwise than by slaughter. In considering measures to minimize human exposure to bovine tissue and products that could contain the agent that causes BSE, FSIS determined that registration information and records from renderers and persons who engage in the business of buying, selling, and transporting 4–D livestock, or parts of the carcasses of any such livestock that died otherwise than by slaughter, would support FDA in enforcing its regulations that prohibit most mammalian protein in ruminant feed.

Parts of carcasses of 4–D livestock are often used in rendering. Renderers produce meat and bonemeal and similar products used in livestock and poultry feed. If any ruminant feed is suspected of containing mammalian protein, FSIS will need and will be able to obtain registration information from the renderers that supplied rendered ruminant product to the animal feed manufacturers and from the producers or businesses that supplied the renderers with 4–D livestock or parts of carcasses of 4–D livestock. FSIS will also require and will have access to their related business records. FSIS will work collaboratively with FDA to locate these producers and businesses and obtain their records.

Should BSE be introduced into the United States, registration information and business records will be crucial in quickly determining and tracking the source of BSE so as to prevent its spread. Registration information and business records would be crucial in tracking transactions involving cattle that are suspected of being, or confirmed to be, infected with BSE and carcasses and products that are suspected of being, or confirmed to be, contaminated with the agent that causes BSE.

FSIS is reminding businesses subject to the PPIA that are required to register or maintain records that they must do so because the registration and recordkeeping requirements in the poultry products inspection regulations are almost identical to those in the meat inspection regulations. Also, FSIS needs to make sure that its information on registrants is accurate, complete, and current. Therefore, it is important that all businesses required to register under the FMIA or PPIA do so and keep their registrations current. As stated above, in this notice, FSIS is not focusing on egg products businesses because the recordkeeping requirements in the egg products inspection regulations are different from those in the meat and poultry products inspection regulations, because egg products businesses are not required to register with FSIS, and because FSIS is developing a proposed rule on shell eggs and egg products that will address recordkeeping requirements.

Failure To Register or Maintain Records

As FSIS previously stated in its BSE current thinking paper, FSIS intends to increase enforcement of the registration and recordkeeping requirements discussed above. If FSIS determines that a party required to register, or a party required to maintain records, has not done so, FSIS program employees will first remind the party to register immediately or to maintain current and accurate records. If the party continues to violate the registration or recordkeeping requirements, FSIS will then issue a letter of warning. If any party continues to violate the registration or recordkeeping requirements after receiving a letter of warning, FSIS will consider pursuing criminal or other legal action against the violating party.

For violations of the statute such as failure to register with FSIS or to maintain required records, section 406(a) of the FMIA (21 U.S.C. 676(a)) provides that the penalties may be imprisonment for not more than one year, or a fine of not more than $1,000, or both such imprisonment and fine. The PPIA provides that the same penalties may be imposed for certain violations of the statute, including violation of registration and recordkeeping requirements (21 U.S.C. 461(a)). In addition, both statutes provide that if such violations involve intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except when the product is adulterated for certain reasons, mostly concerning product quality), the penalty can be imprisonment for not more than three years or a fine of not more than $10,000, or both.

Section 406(a) of the FMIA (21 U.S.C. 676(a)) also provides that persons, firms, or corporations would not be subject to the above penalties for receiving for transportation any article or animal in violation of the FMIA, if the receipt was made in good faith, unless the person, firm, or corporation refuses to furnish at the request of an FSIS employee the name and address of the person from whom it received such article or animal and copies of any documents pertaining to the delivery of the article or animal to them. Similarly, section 12(b) of the PPIA (21 U.S.C. 461(b)) provides that carriers are not subject to penalties under the PPIA (except for violations of regulations concerning the buying, selling, or transporting of poultry carcasses or parts or products of poultry that are not intended for use as human food) for receiving, carrying, holding or delivering poultry or poultry products owned by another person, in carriers' usual course of business, unless they have knowledge or are in possession of facts that would indicate that the poultry or poultry products were not inspected or marked in accordance with the provisions of the PPIA or were otherwise not eligible for transportation under the PPIA. Carriers are liable, however, if they refuse to furnish at the request of an FSIS employee the name and address of the person from whom they received such poultry or poultry products, and copies of any documents pertaining to the delivery of the poultry or poultry products. These statutory provisions emphasize the importance of carriers' maintaining records of business transactions subject to the FMIA and PPIA and making these records available to FSIS employees.

Under section 404 of the FMIA (21 U.S.C. 674) and section 21 of the PPIA (21 U.S.C. 467c), the United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other Territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, the FMIA and PPIA (including violations of the registration and recordkeeping requirements).

Paperwork Reduction Act

Title: Registration requirements under the FMIA and PPIA.

Type of Collection: New.

Abstract: FSIS has developed a new registration form and has reviewed the paperwork and recordkeeping requirements associated with this form in accordance with the Paperwork Reduction Act. Existing regulations require that certain parties register with FSIS. See ''respondents'' below for a list of the parties required to register.

According to the regulations, parties required to register with FSIS must do so by filing a form and must provide current and correct information to FSIS,

including their name, the address of all locations at which they conduct the businesses that require them to register, and all trade or business names under which they conduct these businesses. These parties must register with FSIS within 90 days after they begin to engage in any of the businesses that require them to register. Because FSIS has developed a new registration form that requires that registrants disclose certain information that was not required on the previous form, all parties required to register with FSIS, including those currently registered, must complete the new form and submit it to FSIS.

Estimate of burden: FSIS estimates that completing the form will take an average of 10 minutes.

Respondents: Meat brokers; poultry products brokers; renderers; animal food manufacturers; wholesalers; warehousemen; and persons that engage in the business of buying, selling, transporting in commerce, or importing, any dead, dying, disabled, or diseased livestock or poultry, or parts of the carcasses of livestock or poultry that have died otherwise than by slaughter.

Estimated number of respondents: 9125 per year.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 1,521 hours.

Copies of this information collection assessment can be obtained from John OConnell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th St., Washington, DC 20250.

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 proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to John O'Connell, see address above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. Comments are requested by August 25, 2003. To be most effective, comments should be sent to OMB within 30 days of the publication date.

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 notice, FSIS will announce it and make copies of this **Federal Register** publication available in the FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the FSIS web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done in Washington, DC, on June 17, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–15741 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 91, 121, 125, and 129

[Docket No. FAA–1999–6411; Amendment Nos. 21–83, 91–272, 121–285, 125–40, 129–35; Special Federal Aviation Regulation No. 88]

RIN 2120–AG62

Extension of Compliance Times for Fuel Tank System Safety Assessments; 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 December 9, 2002 (67 FR 72830). That rule extended the compliance deadline for supplemental type certificate holders to complete safety assessments of their fuel tank systems, and any system that may affect the fuel tank system, and to develop design changes and maintenance programs needed to correct unsafe conditions.

EFFECTIVE DATE: This correction is effective on June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, telephone (425) 227–2132.

Correction

In the final rule FR Doc. 02–30997, on page 72830 in the **Federal Register** issue of December 9, 2002, make the following corrections:

1. On page 72830, in column 1 in the heading section, beginning on line 4, correct ''Amendment Nos. 21–82, 91–272, 121–285, 125–140, 129–35'' to read ''Amendment Nos. 21–83, 91–272, 121–285, 125–40, 129–35, Special Federal Aviation Regulation No. 88''.

2. On page 72833, third column, first sentence of amendatory instruction 2, correct ''SFAR No. 88–1'' to read ''SFAR No. 88''.

Issued in Washington, DC, on June 13, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–16001 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–13–AD; Amendment 39–13200; AD 2003–12–15]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines. This amendment requires introducing an alternative technique to ultrasonically inspect installed fan blades on-wing using a surface wave

ultrasonic probe. This action also adds the application of Metco 58 blade root coating as an optional terminating action. This amendment is prompted by the discovery of cracks on LPC fan blade roots during an engine overhaul. The actions specified by this AD are intended to detect cracks in LPC fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

DATES: Effective July 30, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–249–936. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7176; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines was published in the **Federal Register** on August 9, 2001 (66 FR 41808). That proposal was revised by a supplemental notice of proposed rulemaking (SNPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39). That SNPRM was published in the **Federal Register** on February 20, 2003 (68 FR 8157). That action proposed to introduce an alternative technique to ultrasonically inspect installed fan blades on-wing using a surface wave ultrasonic probe and also to add the application of Metco 58 blade root coating as an optional terminating action in accordance with Rolls-Royce plc mandatory service bulletin RB.211–72–C879, Revision 3, dated October 9, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–12–15 Rolls-Royce plc: Amendment 39–13200. Docket No. 2000–NE–13–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines with low pressure compressor (LPC) fan blades with the part numbers (P/Ns) listed in Table 1 of this AD. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 series airplanes. Table 1 follows:

TABLE 1.—APPLICABLE LPC FAN BLADE P/NS

UL16135	UL16171	UL16182	UL19643	UL20044
UL20132	UL20616	UL21345	UL22286	UL23122
UL24525	UL24528	UL24530	UL24532	UL24534
UL27992	UL28601	UL28602	UL29511	UL29556
UL30817	UL30819	UL30933	UL30935	UL33707
UL33709	UL36992	UL37090	UL37272	UL37274
UL37276	UL37278	UL38029	UL38032	

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To detect cracks in LPC fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane, do the following:

(a) If you have a full set of fan blades, modified using RR service bulletin RB.211–72–C946, dated August 6, 2002, that can be identified by a blue triangle etched on the blade airfoil suction surface close to the leading edge tip of each blade, no further action is required.

(b) On RB211–535E4 engines, operated to Flight Profile A, ultrasonically inspect, and if

required, relubricate using the following Table 2:

TABLE 2.—RB211–535E4 FLIGHT PROFILE A

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	17,350	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	1,400.
		(ii) Wave Probe	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	1,150.
(2) In Shop	17,350	Root Probe, inspect and relubricate	RB.211–72–C879 Revision 3, 3.C.(1) through 3.C.(4), dated October 9, 2002.	1,400.

(c) On RB211–535E4 engines, operated to Flight Profile B, ultrasonically inspect, and if required, relubricate using the following Table 3:

TABLE 3.—RB211–535E4 FLIGHT PROFILE B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	12,350	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	850.
		(ii) Wave Probe	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	700.
(2) In Shop	12,350	Root Probe, inspect and relubricate	RB.211–72–C879 Revision 3, 3.C.(1) through 3.C.(4), dated October 9, 2002.	850.

(d) On RB211–535E4 engines, operated to combined Flight Profile A and B, ultrasonically inspect, and if required, relubricate using the following Table 4:

TABLE 4.—RB211–535E4 FLIGHT PROFILE A AND B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	65% hard life (To calculate, see Compliance Section 1.C.(4)).	(i) Root Probe, inspect and relubricate, OR.	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	As current flight profile.
		(ii) Wave Probe	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	As current flight profile.
(2) In Shop	65% hard life (To calculate, see Compliance Section 1.C.(4)).	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 3, 3.C.(1) through 3.C.(4), dated October 9, 2002.	As current flight profile.

Note 2: Fan blades that have been operated within RB211–535E4 Flight Profile A and B will have final life as defined in the Time Limits Manual. See References Section 1.G.(3), of MSB RB.211–72–C879, Revision 3, dated October 9, 2002.

(e) On RB211–535E4–B engines, ultrasonically inspect, and if required, relubricate using the following Table 5:

TABLE 5.—RB211–535E4–B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing.	17,000.	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	1,200.
		(ii) Wave Probe.	RB.211–72–C879 Revision 3,3.B.(1) through 3.B.(7), dated October 9, 2002..	1,000.

TABLE 5.—RB211–535E4–B—Continued

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(2) In Shop.	17,000.	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 3,3.C.(1) through 3.C.(4), dated October 9, 2002..	1,200.

Optional Terminating Action

(f) Application of Metco 58 blade root coating using RR SB RB.211–72-C946, Revision 1, dated August 6, 2002, constitutes terminating action to the repetitive inspection requirements specified in paragraphs (b), (c), (d), and (e) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(i) The inspections must be done in accordance with Rolls-Royce plc mandatory service bulletin RB.211–72-C879, Revision 3, dated October 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–249–936. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in CAA airworthiness directive AD 002–01–2000, dated October 9, 2002.

Effective Date

(j) This amendment becomes effective on July 30, 2003.

Issued in Burlington, Massachusetts, on June 13, 2003.

Peter A. White,

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

[FR Doc. 03–15449 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 1, 3, 5, 52, 100, 110, 151, 154, 155, 162, 165, 173, and 174

[USCG–2003–15404]

RIN 1625–ZA00

Navigation and Navigable Waters—Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes editorial and technical changes throughout title 33 of the Code of Federal Regulations (CFR) to update and correct the title before it is revised on July 1, 2003. Our rule updates organization names and addresses, and makes conforming amendments and technical corrections. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective June 30, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–2003–15404), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, 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, call Robert Spears, Project Manager, Standards Evaluation and Development Division (G–MSR–2), Coast Guard, at 202–267–1099. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule consists only of corrections and editorial, organizational, and conforming amendments to title 33 of the Code of Federal Regulations (CFR). These changes will have no substantive effect on the public; therefore, it is not necessary for us to publish an NPRM and providing an opportunity for public comment. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

Each year title 33 of the Code of Federal Regulations is updated on July 1. This rule, which becomes effective June 30, 2003, corrects organization names and addresses, adds gender-neutral language, revises authority citations for certain parts to reflect our move to the Department of Homeland Security (DHS) in March 2003, and makes other technical and editorial corrections throughout title 33. This rule does not change any substantive requirements of existing regulations.

In the following three paragraphs, we have described revisions that are not self-explanatory name, address or spelling corrections, or gender-neutral changes.

Coast Guard Auxiliary. Unnecessary §§ 5.51 (Damaged equipment or facilities) and 5.53 (Constructive or actual loss) are being removed and § 5.49 (Reimbursement for expenses) is being revised to remove wording that merely reflects current internal procedures but that is not intended to govern those procedures.

National Preparedness for Response Exercise Program (PREP) Guidelines. In §§ 154.1055 and 155.1060, we have provided a Landover, MD address where you can obtain a copy of the Preparedness for Exercise Program (PREP) Guidelines. In addition, we have added a website address in notes to these sections where you may view these guidelines on the Internet. We have also clarified that these guidelines are just one option for complying with facility and vessel response plan exercise requirements in §§ 154.1060 and 155.1065, respectively.

Geographic coordinates. In § 3.40–15, we are revising a segment of the boundary for the New Orleans Marine Inspection Zone and Captain of the Port Zone. That segment, which was written before 1996, referenced the Coast Guard District 8 boundary that was subsequently changed when Districts 2 and 8 merged (61 FR 29958, June 13, 1996). We are also correcting two erroneous references to latitudes. In § 162.117, we corrected a geographic coordinate for a stated location, the De Tour Reef Light. In § 165.151, we converted erroneous minutes symbols to seconds symbols. And in § 165.1181, we eliminated a line containing a duplicate geographic coordinate.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

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

This rule will have no substantive effect on the regulated public. Therefore, 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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 5

Volunteers.

33 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel.

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 154

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

33 CFR Part 155

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

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

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

33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 174

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 3, 5, 52, 100, 110, 151, 154, 155, 162, 165, 173, and 174 as follows:

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for part 1, subpart 1.05, is revised to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.

§§ 1.05–1, 1.05–5, 1.05–10, and 1.05–20 [Amended]

■ 2. In subpart 1.05 remove the words ''Marine Safety Council'', and add, in their place, the words ''Marine Safety and Security Council'' in the following places:

■ a. Section 1.05–1(d).

■ b. Section 1.05–5 including the section heading.

■ c. Section 1.05–10(b).

■ d. Section 1.05–20(a).

§ 1.05–20 [Amended]

■ 3. In addition to amendments set forth in the nomenclature change above, in § 1.05–20(a), remove ''/3406'', immediately after ''G–LRA''.

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

■ 4. The authority citation for part 3 is revised to read as follows:

Authority: 14 U.S.C. 633; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.

§ 3.40–15 [Amended]

■ 5. In § 3.40–15(b), remove the words ''88°00′ W. latitude'', ''89°10′ N. latitude'', and ''Eighth Coast Guard District line; thence west along the Eighth Coast Guard District line'' and add, in their place, the words ''88°00′ W. longitude'', ''89°10′ W. longitude'', and ''northern boundary of Montgomery County; thence southwesterly along the northern and western boundaries of Montgomery, Carroll, Holmes, Humphreys, Sharkey, and Issaquena Counties to the Louisiana-Arkansas boundary; thence west along the Louisiana-Arkansas boundary'' respectively.

PART 5—COAST GUARD AUXILIARY

■ 6. The authority citation for part 5 is revised to read as follows:

Authority: 14 U.S.C. 633, 892; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.

■ 7. Revise § 5.49 to read as follows.

§ 5.49 Reimbursement for expenses.

Any person whose facility has been offered to and accepted by the Coast Guard may be reimbursed for the actual necessary expenses of operating that facility, in accordance with applicable statutes and the procedures prescribed by the Commandant.

§§ 5.51 and 5.53 [Removed]

■ 8. Remove §§ 5.51 and 5.53.

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

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

Authority: 10 U.S.C. 1552; 14 U.S.C. 425.

§§ 52.1, 52.2, and 52.11 [Amended]

■ 10. In part 52, remove the word ''Transportation'', and add, in its place, the words ''Homeland Security'' in the following places:

■ a. Section 52.1.

■ b. Section 52.2(a).

■ c. Section 52.11(a) and (b).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 11. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.

§§ 100.10, 100.25, 100.35, 100.40, and 100.1101 [Amended]

■ 12. In part 100—

■ a. Add the words ''or she'' immediately after the word ''he'' in the following places:

■ i. Section 100.10.

■ ii. Section 100.25(a)(1) and (a)(2).

■ iii. Section 100.35(a).

■ iv. Section 100.40(a).

■ v. Section 100.1101(b)(3).

■ b. Add the words ''or her'' immediately after the word ''his'' in the following places:

■ i. Section 100.25(a).

■ ii. Section 100.35(a) and (b).

■ iii. Section 100.1101(b)(3).

■ c. Add the words ''or she'' immediately after the word ''He'' in § 100.25(a)(2).

§ 100.15 [Amended]

■ 13. In § 100.15—

■ a. In paragraph (b), add the words ''or her'' immediately after the word ''him'';

■ b. In paragraph (c), remove the words, ''Except as in paragraphs (d) and (e) of this section, the'' and replace them with the word ''The''; and

■ c. Remove paragraphs (d) and (e), and redesignate paragraph (f) as paragraph (d).

§ 100.102 [Amended]

■ 14. In § 100.102(b)(3) and (b)(4), remove the lower-cased word ''guard'' and replace it with the initially-capped word ''Guard''.

PART 110—ANCHORAGE REGULATIONS

■ 15. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.

§ 110.224 [Amended]

■ 16. In paragraph (d)(2), table 110.224(D)(1), replace the word ''Suisan'' with the word ''Suisun''.

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 17. The authority citation for part 151, subpart D is revised to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.

§ 151.2025 [Amended]

■ 18. In § 151.2025(b), in the definitions for ''NANCPA'' and ''NISA'', remove the acronym ''NANCPA'', and add, in its place, the acronym ''NANPCA''.

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

■ 19. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170. Subpart F is also issued under 33 U.S.C. 2735.

§ 154.1055 [Amended]

■ 20. Revise § 154.1055(f) to read as follows:

§ 154.1055 Exercises.

* * * * *

(f) Compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy the facility response plan exercise requirements. These guidelines are available from the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20875 (fax: 301–386–5394, stock number USCG–X0241). Compliance with an alternative program that meets the requirements of paragraph (a) of this section and has been approved under § 154.1060 will also satisfy the facility response plan exercise requirements.

Note to paragraph (f): The PREP guidelines are available online at http://dmses.dot.gov/docimages/pdf1a/198001_web.pdf.

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

■ 21. The authority citation for part 155 continues 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.

■ 22. Revise § 155.1060(h) to read as follows:

§ 155.1060 Exercises.

* * * * *

(h) Compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy the vessel response plan exercise requirements. These guidelines are available from the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20875 (fax: 301–386–5394, stock number USCG–X0241). Compliance with an alternative program that meets the requirements of paragraph (a) of this section and has been approved under § 155.1065 will also satisfy the vessel response plan exercise requirements.

Note to paragraph (h): The PREP guidelines are available online at *http://dmses.dot.gov/docimages/pdf1a/198001_web.pdf*

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

■ 23. The authority citation for part 162 is revised to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.

§ 162.117 [Amended]

■ 24. In paragraph (a) of § 162.117, replace ''45°5′ N'' with ''45°57′ N''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 25–26. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

§ 165.151 [Amended]

■ 27. In § 165.151—

■ a. In paragraph (a)(1), remove the coordinates ''41°00′35′ N, 073°37′05′ W'' and, in their place, add the coordinates 41°00′35″ N, 073°37′05″ W''.

■ b. In paragraph (a)(2), remove the coordinates ''41°03′11′ N, 073°26′41′ W'' and, in their place, add the coordinates ''41°03′11″ N, 073°26′41″ W''.

■ c. In paragraph (a)(3), remove the coordinates ''40°53′00′ N, 073°29′13′ W'' and, in their place, add the coordinates ''41°53′00″ N, 073°29″13″ W''.

■ d. In paragraph (a)(4), remove the coordinates ''41°18′05′ N, 072°02′08′ W'' and, in their place, add the coordinates ''41°18′05″ N, 072°02″08″ W''.

■ e. In paragraph (a)(5), remove the coordinates ''41°15′07′ N, 072°57′26′ W'' and, in their place, add the coordinates ''41°15′07″ N, 072°57′26″ W''.

■ f. In paragraph (a)(6), remove the coordinates ''40°17′31′ N, 072°54′48′ W'' and, in their place, add the coordinates ''40°17′31″ N, 072°54′48″ W''.

■ g. In paragraph (a)(7), remove the coordinates ''41°16′10′ N, 072°36′30′ W'' and, in their place, add the coordinates ''41°16′10″ N, 072°36′30″ W''.

■ h. In paragraph (a)(8), remove the coordinates ''41°15′56′ N, 072°21′49′ W'' and, in their place, add the coordinates ''41°15′56″ N, 072°21′49″ W''.

■ i. In paragraph (a)(9), remove the coordinates ''41°17′35′ N, 072°21′20′ W'' and, in their place, add the coordinates ''41°17′35″ N, 072°21′20″ W''.

■ j. In paragraph (a)(10), remove the words ''barge one, 41°21′01′ N, 072°05′25′ W, barge two, 41°20′58′ N, 072°05′23′ W, barge three, 41°20′53′ N, 072°05′21′ W'' and, in their place, add the words ''barge one, 41°21′01″ N, 072°05′25″ W, barge two, 41°20′58″ N, 072°05″23″ W, barge three, 41°20′53″ N, 072°05′21″ W''.

■ k. In paragraph (a)(11), remove the coordinates ''41°31′14′ N, 072°04′44′ W'' and, in their place, add the coordinates ''41°31′14″ N, 072°04′44″ W''.

■ l. In paragraph (a)(12), remove the coordinates ''41°45′34′ N, 072°39′37′ W'' and, in their place, add the coordinates ''41°45′34″ N, 072°39′37″ W''.

■ m. In paragraph (a)(13), remove the coordinates ''40°51′48′ N, 072°28′30′ W'' and, in their place, add the coordinates ''40°51′48″ N, 072°28′30″ W''.

■ n. In paragraph (a)(14), remove the coordinates ''40°41′17′ N, 073°00′20′ W'' and, in their place, add the coordinates ''40°41′17″ N, 073°00′20″ W''.

■ o. In paragraph (a)(15), remove the coordinates ''40°44′38′ N, 073°00′33′ W'' and, in their place, add the coordinates ''40°44′38″ N, 073°00′33″ W''.

■ p. In paragraph (a)(16), remove the coordinates ''40°35′45′ N, 073°05′23′ W'' and, in their place, add the coordinates ''40°35′45″ N, 073°05′23″ W''.

■ q. In paragraph (a)(17), remove the coordinates ''40°54′04′ N, 072°16′50′ W'' and, in their place, add the coordinates ''40°54′04″ N, 072°16′50″ W''.

§ 165.1181 [Amended]

■ 28. In § 165.1181(c)(1)(ii)(F), remove line 16, ''37°47′02″ N, 122°23′04″W; thence to''.

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

■ 29. The authority citation for part 173 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; Department of Homeland Security Delegation No. 0170.

§ 173.1 [Amended]

■ 30. In § 173.1, replace the word ''presecibes'' with the word ''prescribes''.

§§ 173.21, 173.23, 173.29, and 173.77 [Amended]

■ 31. In part 173, add the words ''or her'' immediately after the word ''his'' in the following places:
■ 1. Section 173.21(a)(2).
■ 2. Section 173.23.
■ 3. Section 173.29(a) and (d).
■ 4. Section 173.77(b)(2) and (e).

§ 173.57 [Amended]

■ 32. In § 173.57(j), remove the word ''skiis'', and add, in its place, the word ''skis''.

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

■ 33. The authority citation for part 174 is revised to read as follows:

Authority: 46 U.S.C. 6101, 12302; Department of Homeland Security Delegation No. 0170.

§ 174.3 [Amended]

■ 34. In § 174.3, in the definition of ''owner'', add the word ''or her'' immediately after the word ''him ''.

§ 174.5 [Amended]

■ 35. In § 174.5, add the words ''or she'' immediately after the word ''he''.

Dated: June 17, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–15742 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–044]

Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comment.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Meadowbrook State Parkway Bridge, mile 12.8, across the Sloop Channel, in New York. This temporary deviation will test a proposed change to the drawbridge operation schedule and help determine whether a permanent change to the regulations is reasonable. This temporary deviation will allow the Meadowbrook State Parkway Bridge to remain in the closed position from 9 p.m. to midnight on July 4, 2003. This temporary deviation is necessary to facilitate public safety during the annual Jones Beach, Fourth of July fireworks event.

DATES: Comments must reach the Coast Guard on or before September 5, 2003. This deviation is effective on July 4, 2003.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, 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 the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–044), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by September 5, 2003.

Background and Purpose

The Meadowbrook State Parkway Bridge has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water in the closed position, unlimited vertical clearance in the full open position. The existing regulations are listed at 33 CFR 117.799(h).

The bridge owner, the New York State Office of Parks, Recreation and Historic Preservation, requested that the bridge be allowed to remain closed from 9 p.m. to midnight, during the annual Fourth of July fireworks event at the Jones Beach State Park. Allowing the bridge to remain closed is expected to enhance public safety by allowing the large volume of vehicular and pedestrian traffic to safely enter and exit Jones Beach during this annual public event.

Under this temporary deviation the Meadowbrook State Parkway Bridge may remain in the closed position from 9 p.m. through midnight on July 4, 2003.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this public event and to minimize any disruption to the marine transportation system.

This deviation from the operating regulations is authorized under 33 CFR 117.43, and comments and information gathered during the comment period will assist the Coast Guard in determining if this test operating schedule is reasonable and should be made a permanent addition to the drawbridge operation regulations.

Dated: June 13, 2003.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–16000 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN153–2; FRL–7508–6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to particulate matter (PM) regulations for Richmond Power and Light Company (RPL) of Wayne County, Indiana. EPA proposed approval of these regulations, 326 Indiana Administrative Code (IAC) 6–1–14, on April 9, 2003. EPA did not receive any comments on the proposed rule. As a result, the long-term (annual) limits for RPL will be consistent with the short-term limits. Modeling analysis show that air quality is expected to be maintained.

DATES: This rule is effective on July 25, 2003.

ADDRESSES: You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs

Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

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

Table of Contents

I. What are the changes from the previous rule?
II. What is the EPA's analysis of the supporting materials?
III. Public Comments.
IV. Summary of EPA action.
V. Statutory and Executive Order Reviews.

I. What Are the Changes From the Previous Rule?

Indiana revised the long-term PM limits in State Implementation Plan (SIP) rule 326 IAC 6–1–14 for the two RPL boilers in order to make them consistent with the SIP's short-term limits. For boiler no. 1, the new limit is 320 TPY; for boiler no. 2, the new limit is 700 TPY. The previous limits were 71.6 TPY and 233.3 TPY, respectively. RPL's short-term limits remain at 0.19 pounds per million British Thermal Units (lb/MMBTU) and 0.22 lb/MMBTU, respectively. The combined short-term emissions limit for both boilers stays at 0.22 lb/MMBTU.

II. What Is the EPA's Analysis of the Supporting Materials?

Indiana submitted a PM modeling analysis for RPL on August 8, 1995 as part of the SIP revision request approved by EPA on April 9, 1996 (61 FR 15704). This modeling analysis applies to both the short-term limits approved in 1996 and to the new long-term limits. The maximum modeled annual PM concentration was 42.5 micrograms per meter cubed ($\mu g/m^3$). This is 1.7 $\mu g/m^3$ above the measured background concentration of 40.8 $\mu g/m^3$. The annual National Ambient Air Quality Standard (NAAQS) for PM is 50 $\mu g/m^3$. As the modeled concentration is below the NAAQS, the air quality of Wayne County, Indiana should be protected.

III. Public Comments

EPA did not receive any public comments on the proposed rulemaking. The comment period closed on May 9, 2003.

IV. Summary of EPA Action

EPA is approving revisions to 326 IAC 6–1–14, the PM emission limits for Wayne County, Indiana. EPA proposed approval of these revisions on April 9, 2003 (68 FR 17331) and received no comments during the 30-day comment period. These revisions change the long-term (annual) PM emission limits for both boilers at the RPL facility to make them consistent with short-term limits for these sources. EPA approved revisions to the short-term limits for RPL on April 9, 1996. The PM modeling analysis show concentrations below the NAAQS level, demonstrating that the air quality of Wayne County, Indiana should be protected.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Coordination With Indian Tribal Governments

This 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).

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

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.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer and Advancement Act

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.

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 22, 2003.

Steven Rothblatt,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(159) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(159) On January 31, 2003, Indiana submitted revised particulate matter regulations for Richmond Power and Light Company's coal burning power plant in Wayne County, Indiana. The submission amends 326 IAC 6–1–14. The revisions make the long-term emission limits consistent with the short-term limits approved by EPA on April 9, 1996. The new limits are 320 tons per years for boiler number 1 and 700 tons per years for boiler number 2.

(i) Incorporation by Reference

Amendments to Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Non-attainment Area Limitations, Section 14: Wayne County PM emission requirements. Filed with the Secretary of State on March 10, 2003 and effective on April 9, 2003. Published in 26 *Indiana Register* 2318–19 on April 1, 2003.

[FR Doc. 03–15901 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. UT–001–0048, UT–001–0049, FRL–7501–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; SIP Renumbering

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000. EPA is also approving Supplemental Administrative Documentation submitted on December 31, 2002. The June 27, 1994 submittal revises the numbering and format of Utah's State Implementation Plan (SIP). The April 28, 2000 submittal contains non-substantive changes to correct minor errors in the June 27, 1994 submittal. The December 31, 2002 submittal also contains non-substantive changes to the June 27, 1994 submittal. The intended effect of this action is to make these provisions federally enforceable. In addition, EPA will be acting on other parts of these submittals at a later date. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective July 25, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski , EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: On March 25, 2003 (68 FR 14379), EPA published a notice of proposed rulemaking (NPR) for the State of Utah. The NPR proposed approval of State Implementation Plan (SIP) revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000. The NPR also proposed approval of Supplemental Administrative Documentation submitted on December 31, 2002. The June 27, 1994 submittal revises the numbering and format of Utah's State Implementation Plan (SIP). The April 28, 2000 submittal contains non-substantive changes to correct minor errors in the June 27, 1994 submittal. The December 31, 2002 submittal also contains non-substantive changes to the June 27, 1994 submittal. In addition, we proposed to take no action on parts of these submittals or to act on parts of these submittals at a later date.

The following table cross references the renumbered and prior numbered SIP sections. The table identifies the renumbered SIP sections we are approving as replacing the prior numbered SIP sections.

STATE IMPLEMENTATION PLAN—TABLE OF CORRESPONDING SECTIONS

Title	Renumbered SIP section	Prior numbered SIP section
Legal Authority	Section I	Section 1.

STATE IMPLEMENTATION PLAN—TABLE OF CORRESPONDING SECTIONS—Continued

Title	Renumbered SIP section	Prior numbered SIP section
Review of New and Modified Air Pollution Sources	Section II	Section 2.
Source Surveillance	Section III	Section 3.
Ambient Air Monitoring Program	Section IV	Section 4.
Resources	Section V	Section 5.
Intergovernmental Cooperation	Section VI	Section 6.
Prevention of Air Pollution Emergency Episodes	Section VII	Section 7.
Prevention of Significant Deterioration	Section VIII	Section 8.
Control Measures for Area and Point Sources	Section IX	Section 9.
Sulfur Dioxide	Part B	Part B.
Carbon Monoxide	Part C	Part C.
Ozone	Part D.1	Part D.
Nitrogen Dioxide	Part E	Part E.
Lead	Part F	Part F.
Fluoride	Part G	Part G.
Mountainlands Association of Governments	XI, App. 1	Section 9, App. A.
Wasatch Front Regional Council	XI, App. 2	Section 9, App. B.
Involvement	Section XII	Section 10.
July 27, 1978 contract: Utah Dept. of Social Services and Mountainlands Assoc. of Govt	XII, App. 1	Exhibit. 10.1a
July 21, 1978 contract: Utah Dept. of Social Services and Wasatch Front Regional Council.	XII, App. 2	Exhibit. 10.1b.
Analysis of Plan Impact	Section XIII	Section 11.
Comprehensive Emission Inventory	Section XIV	Section 12.
Utah Code Title 19, Chapter 2	Section XV	Section 13.
Public Notification	Section XVI	Section 14.
Visibility Protection	Section XVII	Section 15.
Demonstration of GEP Stack Height	Section XVIII	Section 16.
Small Business Assistance Program	Section XIX	Section 17.

I. Final Action

We received no comments on the March 25, 2003 notice of proposed rulemaking. As proposed, we are approving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000, except for provisions we are not acting on or provisions which we will act on at a later date. We are also approving Supplemental Administrative Documentation submitted by the State on December 31, 2002, except for provisions we are not acting on or provisions which we will act on at a later date.

The following identifies the renumbered SIP sections we are approving as replacing the prior numbered SIP sections: Section I and Section II, effective 11/12/93; Section III, effective 11/12/93, except III.C, effective 1/1/2003; Section IV, Section V and Section VI, effective 11/12/93; Section VII, effective 11/12/93, except VII.D, effective 1/1/2003; Section VIII, effective January 1, 2003; Section IX, Part B, effective 11/12/93, except the title and IX.B.3.d, effective 2/25/2000, and IX.B.3.a, IX.B.3.e, and IX.B.4, effective 1/1/2003; Section IX, Parts C, E, F and G, effective 11/12/93, except the titles, effective 2/25/2000; Section IX, Part D.1, effective 11/12/93, except for the title, effective 2/25/2000 and IX.D.1.d, effective 1/1/2003; Section XI, Appendix 1 and Appendix 2, effective 11/12/93; Section XII and Section XIII, effective 11/12/93; Section XIV, effective 11/12/93, except Table XIV.9, effective 2/25/2000; Section XV and Section XVI, effective 11/12/93; Section XVII, effective 11/12/93, except XVII.A, XVII.D and XVII.E, effective 2/25/2000; Section XVIII, effective 11/12/93, except XVIII.B, effective 2/25/2000; and Section XIX, effective 11/12/93.

We are also approving non-substantive changes to Section IX, Part C.7 and C.8, Section IX, Part D.2 and Section XXII, effective January 1, 2003.

In addition, we are taking no action on certain portions of the submittals because they have never been part of the SIP or they have been superseded by other submittals approved by the EPA into the SIP. The portions of the submittals that we are taking no action on are Section XX, Section X and Section XI.

Also, we will act on portions of the submittals in separate documents. We are taking action on Section IX, Part A and Part H and non-substantive changes to Section IX, Parts C.1–C.6 and Section XXI in separate documents.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. We believe the Utah SIP revisions that are the subject of this document will not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act because the State is merely renumbering its SIP and the State's revisions are as no less stringent than requirements currently contained in their SIP.

II. Statutory and Executive Order Reviews

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

that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 13, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(56) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(56) On June 27, 1994 and April 28, 2000, the Governor of Utah submitted revisions to the State Implementation Plan. On December 31, 2002, the State of Utah submitted Supplemental Administrative Documentation. The June 27, 1994 submittal revises the numbering and format of Utah's State Implementation Plan (SIP). The April 28, 2000 and December 31, 2002 submittals contain non-substantive changes to correct minor errors in the June 27, 1994 submittal. The provisions identified below are approved into the SIP and supersede and replace the corresponding prior codification of the provisions of the SIP.

(i) Incorporation by reference.

(A) Utah State Implementation Plan Section I; Section II; Section III (except III.C); Section IV; Section V; Section VI; Section VII (except VII.D); Section IX, Part IX.B (except the title, IX.B.3.a, IX.B.3.d, IX.B.3.e, and IX.B.4); Section IX, Parts C, E, F and G (except the titles); Section IX, Part D.1 (except for the title and IX.D.1.d (5)); Section XI (Appendix 1 and Appendix 2 only); Section XII; Section XIII; Section XIV (except Table IX.9); Section XV; Section XVI; Section XVII (except XVII.A, XVII.D and XVII.E); Section XVIII (except XVIII.B); and Section XIX, effective 11/12/93.

(B) Utah State Implementation Plan Section IX, Part IX.B.3.d; Section IX, titles of Parts B, C, D.1, E, F and G; Section XIV, Table XIV.9; Section XVII, Parts XVII.A, XVII.D and XVII.E; and Section XVIII, Part XVIII.B, effective 2/25/2000.

(C) Utah State Implementation Plan Section III, Part III.C; Section VII, Part VII.D; Section VIII; Section IX, Parts IX.B.3.a, IX.B.3.e, IX.B.4, IX.C.7.b(3), IX.C.7.h(3), IX.C.8.b(3), IX.C.8.f(1)(a), IX.C.8.h(3)(a), IX.C.8.h(3)(c), IX.D.1.d(5), IX.D.2.b, IX.D.2.d(1)(a), IX.D.2.e(1), IX.D.2.f(1)(a), IX.D.2.h, IX.D.2.i and IX.D.2.j; and Section XXII, effective January 1, 2003.

(ii) Additional Material.

(A) October 3, 2002 letter from Rick Sprott, Utah Department of Air Quality, to Richard Long, EPA Region VIII, to address typographical errors and missing pages in the January 27, 1994 submittal.

[FR Doc. 03–15900 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 086–SIP; FRL–7518–4]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing our February 13, 2003 proposed finding (68 FR 7327) that the California State Implementation Plan (SIP) is substantially inadequate for all nonattainment air pollution control districts in the State and for all

attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program. We did not receive any comments on our proposal. EPA is finalizing this finding, pursuant to our authority in section 110(k)(5) of the Clean Air Act (CAA or Act), because the State cannot provide ''necessary assurances'' that it or the districts have authority to carry out the applicable nonattainment New Source Review (NSR) or PSD portions of the SIP. This action requires California to amend its State law to eliminate the permitting exemption as it pertains to major agricultural sources of air pollution and submit the necessary assurances by November 23, 2003 to support an affirmative finding by EPA under section 110(a)(2)(E). If the State fails to submit the necessary assurances of authority or if EPA disapproves any such submittal in response to this final SIP call, the sanctions clock in section 179 of the Act will be triggered.

EFFECTIVE DATE: This rule is effective on July 25, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office from 8:30 AM to 5 PM, Monday-Friday. Please call 24 hours in advance to accommodate building security procedures. A reasonable fee may be charged for copying.

Copies of the SIPs for the State of California are also available for inspection at the following location: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Please call Ed Pike, EPA Region IX, at (415) 972–3974 or send e-mail to *pike.ed@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background
A. What action is EPA finalizing?
B. How can California correct the SIP inadequacy?
C. What are the consequences if California does not correct the SIP inadequacy ?
II. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act
K. Petitions for Judicial Review

I. Background

A. What Action Is EPA Finalizing?

CAA section 110(k)(5) provides that whenever EPA finds the applicable implementation plan ''is substantially inadequate to attain or maintain the relevant national ambient air quality standard, * * * or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.'' EPA did not receive any comments on our February 13, 2003 proposed finding of inadequacy. Today we are finalizing our finding that the approved California SIP is substantially inadequate. The SIP cannot provide ''necessary assurances'' that the State or districts have the authority to issue permits under their PSD and nonattainment NSR SIPs to all major sources because Health & Safety Code section 42310(e) exempts major agricultural stationary sources from these permitting requirements.

Specifically, sections 110(a)(2)(C) and (I) and 172 of the Act require the applicable implementation plan to contain a program for issuing permits to major stationary sources of air pollution pursuant to parts C and D of title I of the Act. In addition, section 110(a)(2)(E) requires that each SIP provide necessary assurances that the State or districts have adequate authority to carry out the SIP and that no State law prohibits the State or districts from carrying out any portion of the SIP. The California SIP does not meet these requirements because California Health & Safety Code section 42310(e) exempts ''equipment used in agricultural operations in the growing of crops or the raising of fowl or animals'' from all permitting, including PSD and NSR permitting otherwise required by parts C and D of title I of the Act. As a result, the State and districts cannot issue permits to these agricultural sources, even if they are major stationary sources under the Act. The CAA NSR and PSD permitting requirements do not provide for this exemption.

B. How Can California Correct the SIP Inadequacy?

To correct the deficiency, EPA recommends that the State legislature amend Health & Safety Code section 42310(e) to remove the exemption as it applies to major agricultural sources. The State is already subject to a sanctions clock based on the Notice of Deficiency (NOD) that EPA issued on May 22, 2002, 67 FR 35990, with respect to the State's title V operating permits program. In that NOD, EPA explained that California Health & Safety Code section 42310(e) improperly exempted major agricultural sources from CAA title V permitting. The NOD stated: ''EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution.'' A similar correction with respect to NSR and PSD permitting is necessary by November 23, 2003 to comply with this final action, *i.e.* remove the agricultural exemption for major sources. We are setting this deadline to be consistent with the deadline established in the May 22, 2002 NOD for making the revision for Title V purposes.

Our proposal listed several districts that have New Source Review exemptions that may pose problems for permitting major agricultural stationary sources, but did not call for specific revisions at this time. We believe it is reasonable to wait for the State legislature to correct Health and Safety Code section 42310(e) before we determine whether any such exemptions at the district level represent authority problems under section 110(a)(2)(E).[1] EPA, nonetheless, encourages districts to evaluate their SIP-approved rules to ensure that exemptions do not create potential authority problems. Once the State acts to address Health and Safety Code section 42310(e), EPA will work with the districts to determine if further rulemaking is necessary to address specific local deficiencies that remain after the State law change.

C. What Are the Consequences if California Does Not Correct the SIP Inadequacy?

As noted earlier, California must adopt and submit to EPA a revision to

[1] We note that certain local exemptions are tied to exemptions such as Health and Safety Code section 42310(e) provided under State law. Removal of the exemption at the State level could automatically resolve authority problems at the district level. In addition, if the State legislature were to not only revise the language of Health and Safety Code section 42310(e) but also to clarify that any such local exemptions were also void, no further action by the districts may be necessary. Depending on the action at the State level, EPA may be able to make the required finding under 110(a)(2)(E) that the authority to carry out the air permitting programs is not prohibited by any State or local law.

State law that will provide the necessary assurances that it (or the districts) can fully implement the required NSR and PSD programs for all major sources, including agricultural sources, within the State. If EPA determines that the State has failed to amend State law by November 23, 2003, or if EPA subsequently finds the correction does not adequately provide such assurances, EPA will make a finding under section 179 of the Act that will start a sanctions clock as specified under 40 CFR 52.31.[2] There are two types of sanctions: highway funding sanctions (section 179(b)(1)) and offset sanctions (section 179(b)(2)). Pursuant to our regulations at 40 CFR 52.31, offset sanctions will apply 18 months following a finding by EPA under section 179(a); highway funding sanctions would apply six months later. However, we expect that the State will make the necessary corrections to avoid sanctions.

II. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's SIP call does not establish requirements applicable to small entities. Instead, it requires the State of California to develop, adopt, and submit SIP revisions that would provide the necessary assurances that the applicable NSR and PSD programs do not exempt major agricultural sources.

This rule will not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action will require the State of California to revise laws and regulations governing exemptions for agricultural sources. This requirement, even if considered a Federal mandate,[3] would not result in aggregate costs over $100 million to either the state or local districts. In addition, this final action will not significantly or uniquely impact small governments.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not impose a new enforceable duty on the State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

[2] EPA is using its authority in section 110(k)(5) to set a deadline for a corrective submittal that is less than 18 months. We believe the November 23, 2003, deadline for beginning the 18 month sanctions clock is reasonable because action by this date is otherwise required to address the title V problems noted above.

[3] It is unclear whether a requirement to submit a SIP revision would constitute a federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

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

Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 25, 2003.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New source review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–16028 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0181; FRL–7313–9]

Flufenacet (N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule. SUMMARY:

This regulation establishes a tolerance for combined residues of flufenacet (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on corn, field, forage; corn, field, grain; corn, field, stover; and soybean, seed; and for indirect or inadvertent residues for flufenacet and its metabolites in or on alfalfa, forage; alfalfa, hay; alfalfa, seed; clover, forage; clover, hay; grain, cereal, group 15, except rice; grain, cereal, forage, fodder and straw, group 16, except rice; and grass, forage, fodder, and hay, group 17. BayerCropScience 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 June 25, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0181, must be received on or before August 25, 2003.

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

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0181. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

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

II. Background and Statutory Findings

In the **Federal Register** of March 20, 2003 (68 FR 13703) (FRL–7296–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 6F4631 and 0F6095) by BayerCropScience, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. That notice included a summary of the petitions prepared by BayerCropScience, the registrant. One comment was received in response to this notice of filing by B. Sachau, 15 Elm Str., Florham Park, NJ 07932. Mr. Sachau objected generally to the presence of pesticides in food and specifically to the presence of flufenacet.

Bayer requested in petition 6F4631 that 40 CFR 180.527 (a) be amended by making the currently time-limited tolerances for combined residues of the herbicide flufenacet, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety] permanent in or on the following agricultural commodities: Corn, field, forage at 0.4 ppm; corn, field, grain at 0.05 ppm; corn, field, stover at 0.4 ppm; and soybean, seed at 0.1 ppm.

Bayer requested in petition 0F6095 that the section 18 tolerances listed below in 40 CFR 180.527 (b) for combined residues of the herbicide flufenacet, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and it's metabolites containing 4-fluoro-*N*-methylethyl benzenamine moiety] be made permanent and moved to 40 CFR 180.527 (a), cattle, fat at 0.05 ppm; cattle, kidney at 0.5 ppm; cattle, meat at 0.05 ppm; cattle, meat byproducts at 0.1 ppm; goat, fat at 0.05 ppm; goat, kidney at 0.5 ppm; goat, meat at 0.05 ppm; goat, meat byproducts at 0.1 ppm; hog, fat at 0.05 ppm; hog, kidney at 0.5 ppm; hog, meat at 0.05 ppm; hog, meat, byproducts at 0.1 ppm; horse, fat at 0.05 ppm; horse, kidney at 0.5 ppm; horse, meat at 0.05 ppm; horse, meat byproducts at 0.1 ppm; sheep, fat at 0.05 ppm; sheep, kidney at 0.5 ppm; sheep, meat at 0.05 ppm; sheep, meat byproducts at 0.1 ppm; wheat, forage at 10.0 ppm; wheat, grain at 1.0 ppm; wheat, hay at 2.0 ppm; and wheat, straw at 0.50 ppm.

Bayer requested in petition 0F6095 that the currently time limited tolerances in 40 CFR 180.527 (d) be amended by establishing permanent tolerances for indirect or inadvertent residues of the herbicide flufenacet;*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4- thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities from the application of this herbicide to the raw agricultural commodities listed in 40 CFR 180.527 (a) and (b) at the levels listed below Table 1:

TABLE 1.—TOLERANCE LEVELS

Commodity	Current level in Parts per Million	Level in Parts per Million proposed by Bayer
Alfalfa, forage	0.1	0.1
Alfalfa, hay	0.1	0.1
Alfalfa, seed	0.1	0.1
Clover, forage	0.1	0.1
Clover, hay	0.1	0.1
Grain, cereal, group 15, except rice	0.1	0.4
Grain, cereal, forage, fodder, and straw, group 16, except rice	0.1	10.0
Grass, forage, fodder and hay, group 17	0.1	0.1

The Agency's current review did not include the data submitted with petition 0F6095. Therefore, the Agency is leaving the section 18 time limited tolerances listed in 40 CFR 180.527 (b) unchanged. The time limited tolerances listed in 40 CFR 180.527 (b) were issued in connection with a section 18 and were extended to July, 2005 on January 16, 2003 (68 FR 2242)(FRL–7284–8). The section 18 tolerances are not being modified in this notice but are included in the risk assessments discussed below. In addition, since the Agency's current review did not include the data submitted with petition 0F6095 and the risk assessment outlined below indicated that the risk cup was full, the tolerances for indirect or inadvertent residues listed in 40 CFR 180.527(d) will be made permanent but the levels will remain unchanged.

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

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for combined residues of flufenacet, (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide) and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety on corn, field, forage at 0.4 ppm; corn, field, grain at 0.05 ppm; corn, field, stover at 0.4 ppm; soybean, seed at 0.1 ppm by establishing permanent tolerances for indirect or inadvertent residues of the herbicide flufenacet, (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4- thiadiazol-2-yl]oxy]acetamide) and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities from the application of this herbicide to the raw agricultural commodities, listed in 40 CFR 180.527 (a) and (b), alfalfa, forage at 0.1 ppm; alfalfa, hay at 0.1 ppm; alfalfa, seed at 0.1 ppm; clover, forage at 0.1 ppm; clover, hay at 0.1 ppm; grain, cereal, group 15, except rice at 0.1 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice at 0.1 ppm; and grass, forage, fodder, and hay, group 17 at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by flufenacet are discussed in Table 2 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents - rat	NOAEL = <6.0 (male [m], 7.2 (female [f]) milligram/kilogram/day (mg/kg/day) LOAEL = 6.0(m) mg/kg/day based on decreased T4; 28.8 mg/kg/day (f) and on hematology and clinical chemistry findings
870.3100	90–day feeding - mouse	NOAEL(mg/kg/day)=18.2(m),24.5(f), LOAEL (mg/kg/day)=64.2 (m), 91.3(f) based on systemic toxicity and histopathology of the liver, spleen, and thyroid.
870.3150	90–Day oral toxicity in nonrodents	NOAEL (mg/kg/day)= 1.67 (m);1.70 (f). LOAEL (mg/kg/day)= 7.20 (m); 6.90 (f) based on increases in LDH, globulin, and spleen pigment in females, decreased T4 and ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females
870.3200	21/28–Day dermal toxicity	Dermal irritation NOAEL(mg/kg/day)=1000 (m and f) Systemic toxicity NOAEL mg/kg/day) = 20(m); 150(f) LOAEL(mg/kg/day)= 150(m);1,000(f) based on decreased T4 and FT4 levels in both sexes and histopathological findings in females
870.3700	Prenatal developmental toxicity in rodents (rat)	Maternal NOAEL = 25 mg/kg/day LOAEL = 125 mg/kg/day based on decreased BWG initially Developmental NOAEL = 25 mg/kg/day LOAEL = 125 mg/kg/day based on decreased fetal body weight, delayed ossificaition in skull, vertebrae, sternebrae, and appendages, and increased extra ribs.
870.3700	Prenatal developmental toxicity in nonrodents (rabbits)	Maternal NOAEL = 5 mg/kg/day LOAEL = 25 mg/kg/day based on histopathological findings in liver. Developmental NOAEL = 25 mg/kg/day LOAEL = 125 mg/kg/day based on increased skeletal variations.
870.3800	Reproduction and fertility effects - rat	Parental/Systemic NOAEL = 1.4 (m), 1.5(f) mg/kg/day LOAEL = 7.4 (m), (8.2 (f) mg/kg/day based on increased liver weight in F1 females and hepatocytomegaly in F1 males Reproductive NOAEL = 1.3 mg/kg/day LOAEL = 6.9 mg/kg/day based on increased pup death in early lactation (including cannibalism) for F1 liters and the same effects in F1 and F2 pups at 36 mg/kg/day.

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4100	Chronic toxicity dogs	NOAEL = 1.29(m), 1.14(f) mg/kg/day LOAEL = 27.75 (m), 26.82(f) mg/kg/day based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T3, T4, and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve, and liver.
870.4300	Chronic toxicity/ oncogenicity in rodents (rat)	NOAEL =1.2 (m), 1.5 (f) mg/kg/day LOAEL = 19.3 (m), 24.4(f) mg/kg/day based on methemoglobinemia and multi-organ effects in blood, kidney, spleen, heart, brain, eye, liver and uterus. No evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = <7.4 ((m), 9.4 (f) mg/kg/day LOAEL = 7.4 (m), 38.4 (f) mg/kg/day based on increased incidence and severity of cataracts. No evidence of carcinogenicity
870.5100 870.5395 870.5375 870.5375 870.5550	Gene Mutation Cytogenetics Other Effects	Ames Assay *S. typhimurium* not mutagenic *In vivo* mammalian cytogenetics—micronucleus assay (mouse) not mutagenic. *In vitro* mammalian cytogenetics- Chinese hamster lung fibroblasts (V79) cells not mutagenic. *In vitro* cytogenetics chromosomal analysis of cultured CHO cells-not mutagenic. Unscheduled DNA synthesis in rat hepatocytes *in vitro*-not mutagenic.
870.6200	Acute neurotoxicity screening battery	NOAEL = <75 (m and f) mg/kg/day LOAEL = 75 (m and f) mg/kg/day based on clinical signs in females (uncoordinated gait and decreased activity) and decreased motor activity in males.
870.6200	Subchronic neurotoxicity screening battery	NOAEL = 7.30 (m), 8.40 (f) mg/kg/day LOAEL = 38.1 (m), 42.6 (f) mg/kg/day based on microscopic lesions (including axonal swelling in brain and spinal cord).
870.6300	Developmental neurotoxicity	Maternal NOAEL = 40.8 mg/kg/day LOAEL = not determined (no adverse effects seen). Offspring NOAEL = <1.7 mg/kg/day LOAEL = 1.7 mg/kg/day based on decreased pre- weaning body weight and body weight gain.
870.7485	Metabolism and pharmacokinetics	Rapidly absorbed and metabolized following oral exposure to either single or multiple doses. The urine was the major route of excretion with small amount excreted via feces. Significant amounts of radiolabel were eliminated as CO_2 and CH_4. A maximum of 7% of the total recovered radiolabel was found in the tissues and residual carcass. Twenty-five metabolites arising from the fluorophenyl portion of the molecule were detected in excreta, and 17 of these were identified. The total amount of radiolabel identified ranged from [Fluorophenyl-UL-^{14}C] FOE 5043 67%-86%; [Thiadiazole-2-^{14}C] FOE 5043 84%-92%; and [Thiadiazole-5-^{14}C] FOE 5043 53%-69%. All unidentified residues in excreta were characterized .
n/a	Metabolism/Mechanism	Hypothesis of an extrathyroidal mechanism of action for FOE 5043 (flufenacet) Hypothesis of an extrathyroidal mechanism of action for FOE 5043-supplement to above.
n/a	Metabolism/Metabolite	Evaluated a hypothesis that the neurotoxicity observed in dogs dosed with high levels of FOE 5043 was caused by metabolic limitations.

B. Toxicological Endpoints

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

The Agency imposed an additional 10X safety factor to account for uncertainties arising because available data support the possibility of decreases in thyroid hormones at dose levels similar to those used in the submitted rat developmental neurotoxicity study (DNT) as well as the lack of a NOAEL in the rat developmental neurotoxicity study. To address these concerns the Agency will require a special comparative assay on thyroid hormone levels in neonatal and adult rats as a condition of registration. The Agency also had a concern for a lack of a NOAEL in the rat developmental neurotoxicity study and for the decrease in morphometric measurements in adult females which were not measured at the lowest dose. The doses and endpoints for various risk assessments and the uncertainty factors applied are expected to adequately address uncertainties

arising from the missing data and a lack of a NOEL in the DNT study.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF. For flufenacet, the Agency concluded that the Special FQPA Safety Factor could be reduced to 1X, based on the low degree of concern and lack of residual uncertainties for pre- and post-natal toxicity as outlined in Unit III.D.

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenicity 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 flufenacet used for human risk assessment is shown in Table 3 of this unit:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUFENACET FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	LOAEL = 1.7 mg/kg/day UF = 1,000X Acute RfD = LOAEL/UF = 0.0017 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.0017 mg/kg/day	Developmental Neurotoxicity study in rats. LOAEL = 1.7 mg/kg/day based on decreased body weight/body weight gain, and missing morphometric measurements in caudate/putamen, in pups.
Chronic Dietary (All populations)	LOAEL= 1.7 mg/kg/day UF = 1,000 Chronic RfD = LOAEL/UF = 0.0017 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/ FQPA SF = 0.0017 mg/kg/day	Developmental Neurotoxicity study in rats. LOAEL = 1.7 mg/kg/day based on decreased body weight/body weight gain in pups.
Cancer (oral, dermal, inhalation)	Classifed as 'Not Likely' to be a carcinogen.		

UF = uncertainty factor, FQPA SF = Special FQPA safety factor, NOAEL = no-observed-adverse-effect- level, LOAEL = lowest-observed-adverse-effect-level, PAD = population-adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable/Not Required.

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.527) for the combined residues of flufenacet, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide] and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety, in or on a variety of raw agricultural commodities. Tolerances have been established on meat, fat, kidney, and meat byproducts of cattle, goats, hogs, horses, and sheep, wheat grain, forage, hay, and straw in connection with a section 18. These tolerances expire July, 2005 and have been included in the risk assessments. Risk assessments were conducted by EPA to assess dietary exposures from flufenacet 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 one day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA [1994–1996 and 1998] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated expoure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments:

a. Anticipated-residue estimates were assumed for some commodities (field corn, soybeans, and wheat);

b. Tolerance-level residues were assumed for some crops (cereal grains); and

c. Percent crop-treated estimates were utilized for all crops.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA [–1994–-1996 and 1998] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments:

a. Anticipated-residue estimates were assumed for some commodities (field corn, soybeans, and wheat);

b. Tolerance-level residues were assumed for some crops (cereal grains); and

c. Percent crop-treated estimates were utilized for all crops.

iii. *Cancer.* Flufenacet is not carcinogenic, therefore a quantitative cancer risk assessment was not performed.

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

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

The Agency used PCT information as follows.

Based on current use, the Agency used the following percent crop treated estimates: Field corn 2%, soybeans1%, and wheat 1%,. For crops planted in rotation (cereal grains), 2% crop treated was assumed as this is the highest estimate for the primary crops. For livestock commodities, a percent crop treated estimate of 1%, corresponding to the use on wheat, was utilized. The Agency has previously concluded that secondary residues of flufenacet in livestock commodities would not result from the use of flufenacet on corn or soybeans but would result from the section 18 use on wheat.

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

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

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/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 groundwater. 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. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of flufenacet for acute exposures are estimated to be 9.9 parts per billion (ppb) for surface water and 0.21 ppb for ground water. The EECs for chronic exposures are estimated to be 1.3 ppb for surface water and 0.21 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).

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

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

EPA does not have, at this time, available data to determine whether flufenacet has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet 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 flufenacet has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. No increase in susceptibility was seen in rat and rabbit developmental studies, but qualitative and/or quantitative increases in susceptibility were seen in the rat reproduction study and in the rat developmental neurotoxicity studies.

3. *Conclusion*. The toxicology data base for flufenacet is complete except for a special comparative assay on thyroid hormone levels in neonatal and adult rats and a 28-day inhalation toxicity study in rats. The exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

The Agency evaluated the potential for increased susceptibility of infants and children from exposure to flufenacet. The Agency concluded that there is a low degree of concern and lack of residual uncertainties for pre- and post-natal toxicity in the rat reproduction study and the rat and rabbit developmental toxicity studies. The Agency determined that the concern is also low for susceptibility seen in the developmental neurotoxicity (DNT) study. Multiple offspring effects were seen at the mid- and high doses, and no adverse maternal effects were seen at any dose. However, the only effect seen at the lowest dose in offspring was a transient decrease in body weight. The concern for the decrease in the offspring weights was reduced because no decrease in body weight was seen in the offspring in the reproduction study .

The Agency considered the lack of comparative data for thyroid hormone levels in adult and neonatal animals. Available data support the possibility of decreases in thyroid hormones in adult animals (decreases were observed in several studies conducted in rats, mice, rabbits, and dogs) at dose levels similar to those used in the submitted DNT study. Because of the above concern, a special comparative study on thyroid hormone levels in neonatal and adult rats is being requested by the Agency as a condition of registration. The Agency also noted that morphometric measurements could be incorporated into the comparative thyroid assay to confirm the findings observed in adult female offspring in the DNT (data for this endpoint were not available at the low dose).

Due to the concerns regarding the possibility of decreases in thyroid hormones and the need for comparative susceptibility data on this issue as well as the lack of a NOAEL in the DNT, EPA found no basis to remove the 10X FQPA safety for the protection of infants and children. EPA considers this additional 10X factor to be an uncertainty factor to address the deficiencies in the database.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to flufenacet will occupy 23% of the aPAD for the U.S. population, 17 % of the aPAD for females 13 years and older, 23% of the aPAD for all infants and 48% of the aPAD for children 1-2 years. In addition, there is potential for acute dietary exposure to flufenacet in drinking water. Table 4 of this unit presents the EECs and DWLOCs for the major populations subgroups.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUFENACET

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.0017	23	9.9	0.21	46
All Infants	0.0017	23	9.9	0.21	13
Children (1-2 yrs)	0.0017	48	9.9	0.21	9
Children (3-5 yrs)	0.0017	42	9.9	0.21	10
Children (6-12 yrs)]	0.0017	29	9.9	0.21	12
Youth (13-19 yrs)	0.0017	21	9.9	0.21	41
Adults (20-49 years)	0.0017	20	9.9	0.21	47
Females (13-19 years)	0.0017	17	9.9	0.21	42

The EECs are less than calculated DWLOCs for acute exposure to flufenacet in drinking water, except for the population subgroup, children 1-2 years old, where the EEC marginally exceeds the DWLOC.

In evaluating the acceptability of these estimated risks, EPA has taken into account that the risk assessment was performed by estimating exposure at the 99.9th percentile of exposure. As EPA has explained in its policy regarding use of population percentiles in estimating exposure, EPA generally uses the 95th percentile when conducting an exposure assessment with unrefined residue values (i.e. assuming all covered food contains tolerance level residues) and the 99.9th percentile when using highly refined residue values (i.e. monitoring values). See U.S. EPA, Office of Pesticide Programs, Choosing A Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern 17 (March 16, 2000) (*http://www.epa.gov/pesticides/trac/science/trac2b054.pdf*). The residue values used in the flufenacet risk assessment fall somewhere between highly refined and unrefined. Although the Agency did use data bearing on percent crop treated, three other aspects of the assessment made it not particularly refined, and therefore, somewhat conservative (i.e. tending to overstate exposure). First, EPA assumed tolerance level residues for all crops covered by tolerances designed to address the possibility of flufenacet residues being present in crops grown at a later date in the same field as the treated crop. These rotational crop tolerances include rice and sorghum. Further, compounding this conservative assumption, EPA assumed that two percent of all of the crops covered by rotational crop tolerances would contain flufenacet residues even though the treatment rate for wheat and soybeans was at a one percent level (only corn was at the two percent level) and it is unlikely, in any event, that the crops covered by the rotational crop tolerances would, in their entirety, be grown in a rotational program.

Second, and probably most important, for those crops for which EPA did not assume tolerance level residues (corn, wheat, and soybeans) EPA did not use monitoring data (i.e. data collected from food as it moves in the channels of trade) but data from crop field trials. Crop field trials are studies conducted to determine the maximum residue levels that can occur under the limits imposed by the pesticide's label. Accordingly, such studies involve applying the pesticide, pursuant to its label, the maximum number of times at the maximum application rate and harvesting the crop as promptly as soon as permitted following the last pesticide treatment. These studies overstate the residue levels that consumers are exposed to for two reasons. First, in crop field studies, residue levels are measured at harvest and thus do not reflect the degradation that generally occurs during the production, shipping, and storage of food prior to sale to the consumer. Second, farmers are not required to apply pesticides in the manner used in crop field trials but generally may use lower amounts than those specified on the label, apply the pesticide less frequently than the number of applications permitted by the label, and wait longer to harvest the crop than the minimum pre-harvest interval prescribed by the label. See 7 U.S.C. 136a(ee). Such practices reduce residue values, normally by significant amounts. With flufenacet, the decrease will be even more significant than usual because some of the field trial data are based upon an application rate of 0.9 lbs. a.i. acre per season v.s. the label rate of 0.79 lbs. a.i. acre per season for field corn and 0.9 lbs. a.i. acre per season v.s. the label rate of 0.45 lbs. a.i. per acre per season for soybeans.

A third aspect of the flufenacet exposure assessment that overstated residue levels was the fact that EPA did not use processing reduction factors. Processing studies are performed in order to show whether or not residues concentrate in processed commodities of the RAC. For example wheat grain, may be processed into bran, flour, middlings, shorts and germ. Processing studies frequently show residues decreasing in the processed commodities. If the residues decrease in the processed commodity, we may be able to determine a reduction factor. The concentration and/or reduction factors are directly applied to the residue level used in the dietary exposure assessment for that commodity. The processing studies for flufenacet treated corn and soybeans showed no detectable residues. However, the Agency for this risk assessment assumed the residues in the raw agricultural commodity were carried through undiminished to the processed commodities.

As EPA has made clear, even when an exposure assessment is based on highly refined data, an indication that exposure at the 99.9th percentile poses a risk of concern is merely the starting point for assessing the ultimate safety of the pesticide. EPA has detailed a number of steps that are important to assess the accuracy of any 99.9th percentile estimate including sensitivity analyses and scrutiny of data inputs. When an assessment does not rely on highly refined exposure data there is an even greater need for close examination of

any risk estimates. As outlined above, there are several aspects of the flufenacet exposure assessment that are likely to significantly inflate exposure, and thus risk, estimates. Taking this into account as well as the fact that a risk analysis using a 99.8th population percentile raises the DWLOC for children between 1 and 2 years old to 12 ppb and thus above the EEC of 9.9 ppb, EPA concludes that flufenacet does not show a acute risk of concern.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flufenacet from food will utilize <1 % of the cPAD for the U.S. population, <1 % of the cPAD for all infants and 1.0 % of the cPAD for children (1-2 yrs). In addition, there is potential for chronic dietary exposure to flufenacet in drinking water. There are no residential uses for flufenacet and therefore, no chronic residential exposure to flufenacet. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 5 of this unit:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0017	<1.0	1.3	0.21	59
All Infants	0.0017	<1.0	1.3	0.21	17
Children (1-2 yrs)	0.0017	1.0	1.3	0.21	17
Youth (13-19 yrs)	0.0017	<1.0	1.3	0.21	51
Adults (20-49 yrs)	0.0017	<1.0	1.3	0.21	59

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).

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

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

Flufenacet 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*. Flufenacet is not carcinogenic, therefore no aggregate cancer risk is expected.

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 flufenacet residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances for flufenacet on corn, soybeans, wheat or livestock commodities.

C. Conditions

The following studies are required as a condition of registration.

1. A special comparative sensitivity study on thyroid hormone levels in neonatal and adult rats.

2. 28-day inhalation toxicity study in rats.

V. Comments

One comment was received in response to the notice of filing from B. Sachau, 15 Elm St., Florham Park, NJ 07932. Mr. Sachau objected generally to the presence of pesticides in food and specifically to the presence of flufenacet. Mr. Sachau also proposed that the U.S. establish testing on humans instead of dogs and rats.

Mr. Sachau comment contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to flufenacet, including all anticipated dietary exposures and all other exposures for which there is reliable information.

VI. Conclusion

Therefore, the tolerance is established for combined residues of flufenacet, (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide) and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety] on corn, field, forage at 0.4 ppm; corn, field, grain at 0.05 ppm; corn, field, stover at 0.4 ppm; soybean, seed at 0.1 ppm by establishing permanent tolerances for indirect or inadvertent residues of the herbicide flufenacet, (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2- [[5-(trifluoromethyl)-1,3,4- thiadiazol-2-yl]oxy]acetamide) and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities from the application of this herbicide to the raw agricultural commodities, listed in 40 CFR 180.527 (a) and (b), alfalfa, forage at 0.1 ppm; alfalfa, hay at 0.1 ppm; alfalfa, seed at 0.1 ppm; clover, forage at 0.1 ppm; clover, hay at 0.1 ppm; grain, cereal, group 15, except rice at 0.1 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, at 0.1 ppm; and grass, forage, fodder and hay, group 17 at 0.1 ppm. These tolerances replaced currently expiring tolerances in § 180.527 (a) and (d).

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0181 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 August 25, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0181, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Statutory and Executive Order Reviews

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

proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 12, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.527 is amended by revising paragraphs (a) and (d) to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[(5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl)oxy]acetamide; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[(5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl)oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, field, forage	0.4
Corn, field, grain	0.05
Corn, field, stove	0.4
Soybean, seed	0.1

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the herbicide *N*-(4-fluroophenyl)-*N*-(1-methylethyl)-2-[(5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl)oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the raw agricultural commodities listed in paragraph (a) of this section.

Commodity	Parts per million
Alfalfa, forage	0.1
Alfalfa, hay	0.1
Alfalfa, seed	0.1
Clover, forage	0.1
Clover, hay	0.1
Grain, cereal, group 15, except rice	0.1
Grain, cereal, forage, fodder, and straw, group 16, except rice	0.1
Grass, forage, fodder, and hay, group 17	0.1

[FR Doc. 03–15905 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0179; FRL–7311–5]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION.** These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective June 25, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0179, must be received by EPA on or before July 25, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand

delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *See* the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Pesticide/CFR cite	Contact person
Maneb; § 180.110 Desmedipham; § 180.353 Hydramethylnon; § 180.395 Propiconazole; § 180.434	Libby Pemberton *Sec-18-Mailbox@epamail.epa.gov* Phone number (703) 308–9364
Terbacil; § 180.209 Myclobutanil; § 180.443 Carfentrazone-ethyl; § 180.515 Methoxyfenozide; § 180.544	Barbara Madden *Sec-18-Mailbox@epamail.epa.gov* Phone number (703) 305–6463
Fludioxonil; § 180.516	Andrew Ertman *Sec-18-Mailbox@epamail.epa.gov* Phone number (703) 308–9367
Tebuconazole; § 180.474 Difenoconazole; § 180.475 Fenbuconazole; § 180.480 Pyriproxyfen; § 180.510 Tetraconazole; § 180.557	Andrea Conrath *Sec-18-Mailbox@epamail.epa.gov* Phone number (703) 308–9356

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State Government Agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification ID number OPP–2003–0179. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

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

II. Background and Statutory Findings

EPA published a final rule in the **Federal Register** for each chemical/commodity listed below. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material were evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Carfentrazone-ethyl*. EPA has authorized under FIFRA section 18 the use of carfentrazone-ethyl on hops for control of hops sucker growth to indirectly control powdery mildew in Idaho, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the herbicide carfentrazone-ethyl, (ethyl-α-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolite carfentrazone-chloropropionic acid (α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on hop, dried cone at 0.30 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register**of August 1, 2001 (66 FR 39640) (FRL–6792 –2)

2. *Desmedipham*. EPA has authorized under FIFRA section 18 the use of desmidipham on garden beets for control of various weed pests in New York. This regulation extends a time-limited tolerance for residues of the herbicide desmedipham in or on red beet roots at 0.2 ppm and red beet tops at 15 ppm for an additional 18–month period. These tolerances will expire and are revoked on June 30, 2005. Time-limited tolerances were originally published in the **Federal Register** on August 29, 1997 (62 FR 45741) (FRL–5738–5).

3. *Difenoconazole*. EPA has authorized under FIFRA section 18 the use of difenoconazole on sweet corn seed for control of damping off and die-back diseases in Idaho and Colorado. This regulation extends time-limited tolerances for residues of the fungicide difenoconazole (1-((2-(2-chloro-4-(4-chlorophenoxy)phenyl)-4-methyl-1,3-dioxolan-2-yl)methyl)-1H-1,2,4-triazole) in or on corn, sweet (kernel + corn with husk removed); corn, sweet, forage; and corn, sweet, stover at 0.1 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2005. The time-limited tolerances were originally published in the **Federal Register** of September 1, 1999 (64 FR 47680) (FRL–6094–3).

4. *Fenbuconazole*. EPA has authorized under FIFRA section 18 the use of fenbuconazole on grapefruit for control of greasy spot disease in Florida. This regulation extends time-limited tolerances for combined residues of the fungicide fenbuconazole, (α-[2-4-chlorophenyl)-ethyl]α-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile] and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone and trans-5(4-chlorophenyl)dihydro-3-phenyl-3-(1H1,2,4-triazole-1-ylmethyl-2-3H-furanone in or on fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.01 ppm; grapefruit at 0.5 ppm; grapefruit oil at 35 ppm; and grapefruit dried pulp at 4 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2005. The time-limited tolerances were originally published in the **Federal Register** of January 29, 1999 (64 FR 4577) (FRL–6054–3).

5. *Fludioxonil*. EPA has authorized under FIFRA section 18 the use of fludioxonil on pomegranates for control of gray mold in California. This regulation extends a time-limited tolerance for combined residues of the fungicide fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile), in or on pomegranates at 5.0 ppm for an addtionional 3–year period. This tolerance will expire and is revoked on June 30, 2006. The time-limited tolerance was originally published in the **Federal Register** of September 12, 2001 (66 FR 47403) (FRL–6797–5).

6. *Hydramethylnon*. EPA has authorized under FIFRA section 18 the use of hydramethylnon on pineapple for control of big-headed and Argentine ants in Hawaii. This regulation extends a time-limited tolerance for residues of the insecticide hydramethylnon; tetrahydro-5,5-dimethyl-2-(1H)-pyrimidinoine (3-(4-trifluoromethyl)phenyl)-1-[2-[4(trifluoromethyl)phenyl]ethenyl)-2-propenylidene) hydrazone] in or on pineapple at 0.05 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register** of March 4, 1998 (63 FR 10537) (FR –5767–1).

7. *Maneb*. EPA has authorized under FIFRA section 18 the use of maneb on walnuts for control of bacterial blight in California. This regulation extends a time-limited tolerance for combined residues of the fungicide maneb (manganous ethylenebisdithiocarbamate) calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in or on walnuts at 0.05 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of March 17, 1999 (64 FR 13097) (FRL–6067–9)

8. *Methoxyfenozide*. EPA has authorized under FIFRA section 18 the use of methoxyfenozide on soybeans for control of soybean loopers and salt marsh catepillars in Mississippi. This regulation extends a time-limited tolerance for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide in or on soybean aspirated grain fractions at 20 ppm, soybean seed at 0.04 ppm, soybean forage at 10 ppm, soybean hay at 75 ppm and soybean oil at 1.0 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of November 2, 2001 (66 FR 55585) (FRL–6806–4)

9. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on hops for control of powdery mildew in Idaho, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil, α-butyl-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite α-(3-hydroxybutyl)-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on hops at 5.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2005. A time-

limited tolerance was originally published in the **Federal Register** of July 10, 1998 (63 FR 37289) (FRL–5798–6).

10. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on peppers for control of powdery mildew in California. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil α-butyl-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (α-(3-hydroxybutyl)-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on pepper at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1).

11. *Propiconazole*. EPA has authorized under FIFRA section 18 the use of propiconazole on dry beans for control of rust in Colorado, Kansas, Minnesota, Nebraska, and North Dakota. This regulation extends a time-limited tolerances for combined residues of the fungicide propiconazole 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolite determined as 2,4-dichlorobenzoic acid in or on dry beans at 0.5 ppm, dry bean forage at 8 ppm, and dry bean hay at 8 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2005. The time-limited tolerances for dry bean commodities were originally published in the **Federal Register** of June 13, 1997 (62 FR 32224) (FRL–5718–8).

12. *Propiconazole*. EPA has authorized under FIFRA section 18 the use of propiconazole on cranberry for control of cottonball disease in Wisconsin. This regulation extends a time-limited tolerance for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on cranberry at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of April 11, 1997 (62 FR 17710) (FRL–5600–5).

13. *Propiconazole*. EPA has authorized under FIFRA section 18 the use of propiconazole on grain sorghum for control of sorghum ergot in Kansas, New Mexico and Texas. This regulation extends a time-limited tolerance for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on grain sorghum, grain at 0.2 ppm; grain sorghum, stover at 1.5 ppm; and sorghum aspirated grain fractions at 20 ppm for an additional 18–month period. These tolerances will expire and are revoked on June 30, 2005. Time-limited tolerances were originally published in the **Federal Register** of August 13, 1997 (62 FR 43284) (FRL–5735–2)

EPA has received objections to tolerances it established for propiconazole on different food commodities. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for propiconazole while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA initiated a 60 day public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). That comment period was extended until October 16, 2002 (September 17, 2002 (67 FR 58536) (FRL–7275–3)), and EPA is now examining the extensive comments received. Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with extending the tolerances for propiconazole.

14. *Pyriproxyfen*. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on beans for control of whiteflies in Florida. This regulation extends a time-limited tolerance for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxypyridine in or on bean, succulent at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register** of September 5, 2001 (66 FR 46390) (FRL–6798–6).

15. *Tebuconazole*. EPA has authorized under FIFRA section 18 the use of tebuconazole on garlic for control of rust in California. This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole, (α-[2-(4-chlorophenyl)-ethyl]-α-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on garlic at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of May 26, 1999 (64 FR 28377) (FRL–6079–1).

16. *Tebuconazole*. EPA has authorized under FIFRA section 18 the use of tebuconazole on wheat for control of fusarium head blight in Michigan, Minnesota, North Dakota, and South Dakota. This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole (α-[2-(4-chlorophenyl)-ethyl]-α(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on wheat hay at 15.0 ppm and wheat straw at 2.0 ppm for an additional 18–month period. These tolerances will expire and are revoked on June 30, 2005. Time-limited tolerances were originally published in the **Federal Register** of June 20, 1997 (62 FR 33550) (FRL–5725–7).

17. *Tebuconazole*. EPA has authorized under FIFRA section 18 the use of tebuconazole on barley for control of fusarium head blight in Minnesota, North Dakota, and South Dakota. This regulation extends time-limited tolerances for residues of the fungicide tebuconazole (α-[2-(4-chlorophenyl)-ethyl]-α-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on barley grain at 2.0 ppm, barley hay at 20.0 ppm, and barley straw at 20.0 ppm for an additional 18–month period. These tolerances will expire and are revoked on June 30, 2005. Time-limited tolerance were originally published in the **Federal Register** of June 20, 1997 (62 FR 33550) (FRL–5725–7).

18. *Terbacil*. EPA has authorized under FIFRA section 18 the use of terbacil on watermelon for control of morningglory and other annual broadleaf weeds in Virginia. This

regulation extends a time-limited tolerance for combined residues of the herbicide terbacil (3-tert-Butyl-5-chloro-6-methyluracil and its three metabolites 3-tert-butyl-5-chloro-6-hydroxymethyluracil, 6-chloro-2,3-dihydro-7-hydroxymethyl-3,3-dimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one, and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one) which are calculated as terbacil in or on watermelon at 4.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register** of June 20, 1997 (62 FR 33557) (FRL–5718–7)

19. *Tetraconazole*. EPA has authorized under FIFRA section 18 the use of tetraconazole on sugar beets for control of cercospora leaf spot in Colorado, Montana, Nebraska, and Wyoming. This regulation extends time-limited tolerances for residues of the fungicide tetraconazole, [(+/-)-2-(2,4-dichlorophenyl)-3-(1H-1,2,4-triazol-1-yl) propyl 1, 1,2,2-tetrafluoroethyl ether] in or on sugarbeets, and sugarbeet-related commodities, and for secondary residues of triazole on animal commodities from livestock fed sugarbeet by-products] at 0.10 part per million in/on sugarbeet, 6.0 ppm in/on sugarbeet top, 0.20 ppm in/on sugarbeet dried pulp, 0.30 ppm in/on sugarbeet molasses, 0.050 ppm in milk, 0.030 ppm in cattle, meat and meat byproducts except kidney and liver, 0.20 ppm in kidney, 6.0 ppm in liver, and 0.60 ppm in fat for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2005. The time-limited tolerances were originally published in the **Federal Register** of December 6, 1999 (64 FR 68046) (FRL–6384–1).

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instruction provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0179 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 July 25, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0179, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format 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).

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104 –113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled*Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications '' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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: June 16, 2003.

Debra Edwards,

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), 346(a) and 371.

§ 180.110 [Amended]

■ 2. In § 180.110, in the table to paragraph (b), amend the entry for walnut by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

§ 180.209 [Amended]

■ 3. In § 180.209, in the table to paragraph (b), amend the entry for watermelon by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05.''

§ 180.353 [Amended]

■ 4. In § 180.353, in the table to paragraph (b), amend the entry for red beet roots and red beet tops by revising the expiration/revocation date ''12/31/03'' to read ''6/30/05.''

§ 180.395 [Amended]

■ 5. In § 180.395, in the table to paragraph (b), amend the entry for pineapple by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05.''

§ 180.434 [Amended]

■ 6. In § 180.434, in the table to paragraph (b), amend the entries for sorghum, aspirated grain fractions; sorghum, grain, grain; and sorghum, grain, stover by revising the expiration/revocation date ''12/31/03'' to read ''6/30/05'' and amend the entries for cranberry; dry bean; dry bean forage; and dry bean hay by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

§ 180.443 [Amended]

■ 7. In § 180.443, in the table to paragraph (b), amend the entries for pepper by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05'' and for hop, dried cone by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

§ 180.474 [Amended]

■ 8. In § 180.474, in the table to paragraph (b), amend the entries for barley, grain; barley, hay; barley, straw; wheat, hay; and wheat, straw by revising the expiration/revocation date ''12/31/03'' to read ''6/30/05'' and amend the entry for garlic by revising the expiration/revocation date ''12/31/03'' to read. ''12/31/05''

§ 180.475 [Amended]

■ 9. In § 180.475, in the table to paragraph (b), amend the entry for corn, sweet, kernel plus cob with husks removed; corn, sweet, forage; and, corn, sweet, stover by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

§ 180.480 [Amended]

■ 10. In § 180.480, in the table to paragraph (b), amend the entries for cattle, fat; cattle, meat byproducts; cattle, meat; goat, fat; goat, meat byproducts; goat, meat; grapefruit; grapefruit, dried pulp; grapefruit, oil; hog, fat; hog, meat byproducts; hog, meat; horse, fat; horse, meat byproducts; horse, meat; sheep, fat; sheep, meat byproducts; sheep, meat by revising the expiration/revocation date ''12/31/03'' to read. ''12/31/05.''

§ 180.510 [Amended]

■ 11. In § 180.510, in the table to paragraph (b), amend the entry for bean, succulent by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05.''

§ 180.515 [Amended]

■ 12. In § 180.515, in the table to paragraph (b), amend the entry for hop, dried cone by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05.''

§ 180.516 [Amended]

■ 12. In § 180.516, in the table to paragraph (b), amend the entry for pomegrante by revising the expiration/revocation date ''6/30/03'' to read ''6/30/06.''

§ 180.544 [Amended]

■ 13. In § 180.544, in the table to paragraph (b), amend the entries for soybean, aspirated grain fractions; soybean, forage; soybean, hay; soybean, refined oil; soybean, seed by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

§ 180.557 [Amended]

■ 14. In § 180.515, in the table to paragraph (b), amend the entries for beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, roots; beet, sugar, tops; cattle, fat; cattle, kidney; cattle, liver; cattle, meat; cattle, meat byproducts, except kidney and liver; and milk by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

[FR Doc. 03–15906 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0136; FRL–7310–7]

Buprofezin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of buprofezin in or on bean, snap, succulent; logan; lychee; pistachio; pulasan; rambutan;, and spanish lime. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 25, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0136, must be received on or before August 25, 2003.

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

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7050C), 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@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, and pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification ID number OPP–2003–0136. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

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

II. Background and Statutory Findings

In the **Federal Register** of March 26, 2003 (68 FR 14619) (FRL–7295–8), EPA issued a notice pursuant to section 408

of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (2E6369, 2E6455, and 2E6493) by IR-4, 681 U.S. Highway #1 South, New Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by Nichino American Inc., the registrant.

The petition requested that 40 CFR 180.511 be amended by establishing tolerances for residues of the insecticide buprofezin, buprofezin (2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one), in or on bean, snap, succulent at 0.02 parts per million (ppm); logan at 0.30 ppm; lychee at 0.30 ppm; pistachio at 0.05 ppm; pulasan at 0.30 ppm; rambutan at 0.30 ppm; and spanish lime at 0.30 ppm.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances 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 the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of buprofezin on bean, snap, succulent at 0.02 ppm; logan at 0.30 ppm; lychee at 0.30 ppm; pistachio at 0.05 ppm; pulasan at 0.30 ppm; rambutan at 0.30 ppm;, and spanish lime at 0.30 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

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 buprofezin is discussed in Unit III.A. of the Final Rule on Buprofezin Pesticide Tolerance published in the **Federal Register** on September 5, 2001 (66 FR 46381) (FRL–6796–6).

B. Toxicological Endpoints

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

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for buprofezin used for human risk assessment is shown in the following Table 2:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years of age)	NOAEL = 200 milligrams/kilogram/day (mg/kg/day) UF = 100 aRfD = 2.0 mg/kg/day	FQPA SF = 1X aPAD = aRfD FQPA SF = 2.0 mg/kg/day	Developmental toxicity study-rats LOAEL = 800 mg/kg/day based on incomplete ossification and reduced pup weight

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	N/A	N/A	N/A
Chronic dietary (all populations)	NOAEL= 1.0 mg/kg/day UF = 100 Chronic RfD = 0.01 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD FQPA SF = 0.01 mg/kg/day	2–year chronic/feeding study - rat LOAEL = 8.7 mg/kg/day based on increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid in males
Short-term dermal (1 to 30 days) (Residential)	Dermal study NOAEL = 300 mg/kg/day	LOC for MOE = <100 (Residential) Adults <1,000 (Residential) Infants/children	24–day dermal toxicity study - rat LOAEL = 1,000 mg/kg/day based on inflammatory infiltrate of the liver in females and an increase in acanthosis and hyperkeratosis of the skin in females
Intermediate-term dermal (1 week to 6 months) (Residential)	Dermal study NOAEL = 300 mg/kg/day	LOC for MOE = <100 (Residential) Adults <1,000 (Residential) Infants/children	24–day dermal toxicity study - rat LOAEL = 1,000 mg/kg/day based on inflammatory infiltrate of the liver in females and an increase in acanthosis and hyperkeratosis of the skin in females
Long-term dermal (several months to lifetime) (Residential)	Oral study NOAEL = 1.0 mg/kg/day	LOC for MOE = < 100 (Residential) Adults <1,000 (Residential) Infants/children	2–year chronic/feeding study - rat LOAEL = 8.7 mg/kg/day based on increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid in males
Short-term inhalation (1 to 30 days) (Residential)	Oral study NOAEL = 13.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = < 100 (Residential) Adults <1,000 (Residential) Infants/children	90–day oral toxicity study - rat LOAEL = 68.6 mg/kg/day based on organ weight changes and microscopic findings in the liver and thyroid of both males and females and in the kidney of males
Intermediate-term inhalation (1 week to 6 months) (Residential)	Oral study NOAEL = 13.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = <100 (Residential) Adults <1,000 (Residential) Infants/children	90–day oral toxicity study - rat LOAEL = 68.6 mg/kg/day based on organ weight changes and microscopic findings in the liver and thyroid of both males and females and in the kidney of males
Cancer (oral, dermal, inhalation)		N/A	2–year carcinogenicity study in mice Liver tumors observed in female mice The Agency Cancer Assessment Review Committee recommends that no quantification of cancer risk is required.

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.511 for the residues of buprofezin, in or on the following raw agricultural commodities: Almond, banana, citrus fruits, cotton, cucumber, grape, lettuce (head and leaf), tomato, melon (cantaloupe, honeydew, watermelon, muskmelon), pumpkin, and squash with tolerances for residues of buprofezin ranging from 0.05 to 60 ppm. Tolerances have also been established for residues of buprofezin in/on ruminant fat, liver, and meat byproducts at 0.05 ppm. Risk assessments were conducted by EPA to assess dietary exposures from buprofezin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute dietary analysis assumed tolerance level residues, DEEM™ (ver. 7.76) default processing factors, and 100% crop treated for all registered and proposed commodities (Tier I).

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment, the (DEEM™-FCID) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996, 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure assumed 100% crop treated and DEEM™-FCID (ver. 1.30) default processing factors for all registered/proposed commodities and tolerance level residues for all registered/proposed commodities excluding banana, orange, and tomato processed and unprocessed commodities where average field trial residues were assumed (Tier II).

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

The Agency uses the FQPA Index Reservoir Screening Tool or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will use FIRST (a Tier I model) before using PRZM/EXAMS (a Tier II model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and include a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

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

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

Based on the FIRST and SCI-GROW models, the EECs of buprofezin for acute exposures are estimated to be 102 parts per billion (ppb) for surface water and 0.08 ppb for ground water. The EECs for chronic surface water and ground water exposures are estimated to be 34 ppb, and 0.08 ppb, respectively.

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).

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

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

EPA does not have, at this time, available data to determine whether buprofezin has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to buprofezin and any other substances and buprofezin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that buprofezin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's 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 the FFDCA provides that EPA shall apply an additional tenfold MOS for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different MOS will be safe for infants and children. MOS are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UF (safety) in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The Agency concluded that the available studies provided no indication of increased susceptibility of rats or rabbits following *in utero* exposure or of rats following prenatal/postnatal exposure to buprofezin.

3. *Conclusion*. There is a complete toxicity data base for buprofezin 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 reduced. The FQPA factor is reduced to 1X based on toxicological considerations and based on the conservative residue assumptions used in the dietary risk assessment (currently no residential exposures) and the completeness of the toxicity, residue chemistry and environmental fate data base (evaluated by EPA).

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is

available for exposure through drinking water e.g., allowable water exposure (mg/kg/day) = PAD - (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 youth), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to buprofezin will occupy 1% of the aPAD for the females 13–49 years old. No effect that could be attributed to a single exposure was observed, (no endpoint was chosen) for the general U.S. population (including infants and children). In addition, there is potential for acute dietary exposure to buprofezin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BUPROFEZIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–49 years old)	2.0	1	102	0.08	59,000

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to buprofezin from food will utilize 32% of the cPAD for the U.S. population, 18% of the cPAD for infants <1 year old, and 63% of the cPAD for children 1–2 years old. There are no residential uses for buprofezin that result in chronic residential exposure to buprofezin. In addition, there is potential for chronic dietary exposure to buprofezin 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 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BUPROFEZIN

Population Subgroup	cPAD mg/kg/day	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.01	32	34	0.08	240
All infants (<1 year old)	0.01	18	34	0.08	83
Children (1–2 years old)	0.01	63	34	0.08	37
Females (13–years old)	0.01	30	34	0.08	210

3. *Aggregate cancer risk for U.S. population*. In accordance with the EPA Guidelines for Carcinogen Risk Assessment, the Carcinogen Assessment Review Commission classified buprofezin as having ''suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential'' based on liver tumors in female mice. The Committee further recommended no quantification of cancer risk.

4. *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 buprofezin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology gas chromotography using nitrogen phosphorus detection 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

Canada, Codex, and Mexico do not have maximum residue limits for residues of buprofezin in/on the proposed crops. Therefore, harmonization is not an issue.

V. Conclusion

Therefore, the tolerances are established for residues of buprofezin, [(2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4H-1,3,5-

thiadiazin-4-one)], in or on bean, snap, succulent at 0.02 ppm; logan at 0.30 ppm; lychee at 0.30 ppm; pistachio at 0.05 ppm; pulasan at 0.30 ppm; rambutan at 0.30 ppm; spanish lime at 0.30 ppm

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0136 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 August 25, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0136, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statuatory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any

technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 6, 2003.

Debra Edwards,

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), 346(a) and 371.

■ 2. Section 180.511 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.511 Tolerances are established for residues of buprofezin in or on the following food commodities.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * * *	*	
Bean, snap, succulent	0.02	None
* * * * * *	*	
Logan	0.30	None
Lychee	0.30	None
* * * * * *	*	
Pistachio	0.05	None
Pulasan	0.30	None
Rambutan	0.30	None
* * * * * *	*	
Spanish lime	0.30	None
* * * * * *	*	

* * * * *

[FR Doc. 03–15767 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 98–21; FCC 02–110]

Policies and Rules for the Direct Broadcast Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to final regulations which were published Wednesday, August 7, 2002 (67 FR 51110). The regulations relates to Policy and Rules for the Direct Broadcast Satellite Service.

DATES: Effective June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Selina Y. Khan, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–7282 or via the Internet at *skhan@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final rule document published on Wednesday, August 7, 2002 publishes 47 CFR 25.114 by adding paragraph (c)(22) instead of paragraph (c)(23).

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and are in need of clarification.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ Accordingly, 47 CFR part 25 is corrected by making the following correcting amendments:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: U.S.C. 701744. Interprets or applies 47 U.S.C. 51, 154, 302, 303, and 307, unless otherwise noted.

§ 25.114 [Amended]

■ 2. Amend § 25.114 by redesignating the second paragraph (c)(22) as paragraph (c)(23).

[FR Doc. 03–15963 Filed 6–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030617153–3153–01; I.D. 061203E]

RIN 0648–AR29

Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems (VMS)

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

ACTION: Final rule; amendment of effective date.

SUMMARY: This document amends the effective date for the requirement to have a NOAA-approved, VMS unit installed and operating on any vessel leaving port to fish for HMS with pelagic longline gear on board to September 1, 2003.

DATES: Effective September 1, 2003.

ADDRESSES: To obtain copies of the list of NOAA-approved VMS mobile transmitting units and NOAA-approved VMS communications service providers, write to NMFS Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information regarding the requirement contact Chris Rilling, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, phone 301–713–2347. For current listing of approved VMS units contact Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation and activation checklists, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300, fax 301–427–2055.

The public may acquire this notice, installation checklist, and relevant updates via the ''fax-back'' service, or at the OLE website *http://www.nmfs.noaa.gov/ole/vms.html.*

SUPPLEMENTARY INFORMATION: On May 28, 1999, NMFS issued a regulation (64 FR 29090) codified at 50 CFR 635.69(a), requiring all commercial pelagic longline vessels fishing for Atlantic HMS to install a NMFS-approved VMS unit. Due to litigation, the requirement was stayed indefinitely on October 1, 2000 (66 FR 1907, January 10, 2001). On October 15, 2002, the U.S. District Court for the District of Columbia issued a final order upholding the VMS regulation. Following the favorable court ruling, NMFS began working to reinstate the VMS requirement.

On March 11, 2003, NMFS published a notice in the **Federal Register** (68 FR 11534) and corrected it on March 27, 2003 (68 FR 14949), to provide a list of the NMFS-approved VMS units for use by pelagic longline vessels in the Atlantic Highly Migratory Species (HMS) Fisheries and set forth relevant features of each VMS. The notification was issued to update and replace the approval notice published on September 9, 1999. An additional type approval notice was published on May 1, 2003 (68 FR 23285).

NMFS also submitted a request to the Office of Management and Budget (OMB) to reinstate approval for VMS information collection under the provisions of the Paperwork Reduction Act. A notice regarding this collection was published in the **Federal Register** on November 18, 2002 (67 FR 69506). The second notice of OMB review was published in the **Federal Register** on March 19, 2003 (68 FR 13280). OMB approved the VMS information collection request on May 10, 2003.

The placement of VMS units on fishing vessels in this fishery will enable NMFS to determine vessel locations and will complement the Agency's efforts to monitor and enforce compliance with applicable regulations. Because fishermen need time to purchase and install VMS, the VMS rule will be effective September 1, 2003, which provides approximately 60 days for affected fishermen to come into compliance.

Classification

This action is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Assistant Administrator (AA) has determined that implementation of a VMS program in the pelagic longline fishery is necessary to monitor and enforce closed areas implemented to reduce bycatch. The AA finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. This amendment establishes a new effective date for the HMS VMS rule, which had been suspended due to litigation. NMFS provided for prior notice and comment before promulgating the HMS VMS rule in 1999, then provided for additional

public comment pursuant to a court order. The court upheld the rule on all counts and issued a final order in October, 2002. Subsequently, NMFS renewed its Paperwork Reduction Act (PRA) approval, which included additional public comment on the information collection under the rule, and completed type approvals for VMS units for the fishery. This amendment does not change any substantive provisions of the HMS VMS rule, but provides a new effective date, as the original date was suspended because of the court case. Further delay of this rule to provide additional opportunity for public comment is contrary to the public interest because fishing is currently underway, and VMS would facilitate efficient allocation of limited enforcement resources to meet management objectives, including time and area closures established to protect juvenile fish and protected species. U.S. Atlantic pelagic longline vessels operate in fishing areas in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, and given increased commitments to homeland security, VMS will play an important role in determining deployment of at-sea resources.

This rule refers to collection-of-information requirements subject to the PRA and which have been approved by OMB under control number 0648–0372. Public reporting burden for these requirements is estimated to average 4 hours for installation of equipment, 2 hours for annual maintenance of the equipment (beginning in the second year), 0.3 seconds per automated position report from the automated equipment, and 5 minutes to complete and return a one-time installation checklist. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**) and OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

Dated: June 20, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–16085 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000629197–3147–04; I.D. 032900A]

RIN 0648–AN06

Atlantic Highly Migratory Species (HMS); Monitoring of Recreational Landings; Retention Limit for Recreationally Landed North Atlantic Swordfish; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: This document clarifies and corrects a cross-reference in final regulations that were published in the **Federal Register** of Tuesday, January 7, 2003. The final rule amended the regulations governing Atlantic billfish and North Atlantic swordfish recreational fisheries.

DATES: Effective on June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Russell Dunn or Richard A. Pearson at 727–570–5447.

SUPPLEMENTARY INFORMATION: In a final rule published on January 7, 2003, (68 FR 711), an amendment to § 635.5(c) inadvertently contained an incorrect reference in the last sentence. The sentence indicated that HMS tournament landings must be reported to NMFS as specified under § 635.5(c) of the section. HMS tournament landing reports are actually specified and described under § 635.5(d) of the section. This amendment to the final rule removes the incorrect reference to tournament reporting at § 635.5(c) and replaces it with the correct reference to tournament reporting as specified at § 635.5(d).

Classification

This rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The AA finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. This rule makes a minor, non-substantive change to correct an incorrect reference to another regulation. Because this rule makes non-substantive or de minimus changes to the existing regulations, the AA also finds good cause, under 5 U.S.C. 553(d), not to delay for 30 days the effective date of this action. NMFS has the ability to rapidly communicate the amendments in this rule to fishery participants through its FAX network and HMS Information Line.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This action is not significant under the meaning of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: June 19, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 635 is corrected by making the following correcting amendment:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.5, the last sentence in paragraph (c) introductory text is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) *Anglers.* * * * Tournament landings must be reported as specified under paragraph (d) of this section.

* * * * *

[FR Doc. 03–16087 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 122
Wednesday, June 25, 2003

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

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02–112–2]

Tuberculosis in Cattle and Bison; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for a proposed rule that would amend the bovine tuberculosis regulations regarding State and zone classifications by establishing two separate zones with different risk classifications in the State of Michigan and would raise the designation of one of those zones from modified accredited to modified accredited advanced. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before July 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–112–1'' on the subject line.

You may read any comments that we receive on Docket No. 02–112–1 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2003, we published in the **Federal Register** (68 FR 16733–16735, Docket No. 02–112–1) a proposal to amend the bovine tuberculosis regulations regarding State and zone classifications by splitting the State of Michigan into two zones and raising the classification of one of those zones from modified accredited to modified accredited advanced.

Comments on the proposed rule were required to be received on or before June 6, 2003. We are reopening the comment period on Docket No. 02–112–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between June 7, 2003 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 19th day of June, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–16038 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–45–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. That AD currently requires revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA), located in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add critical life-limited parts for enhanced inspection. This action is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 6, 2000, the FAA issued AD 2000–12–05, Amendment 39–11783 (65 FR 36783, June 12, 2000), to require revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals of International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since AD 2000–12–05 was issued, IAE has developed additional focused inspection procedures. This proposal would add the high pressure compressor (HPC) stage 3–8 drum, HPC stage 9–12 drum, HPC rear shaft, HPC stage rear rotating seal, and stages 3 through 7 low pressure turbine (LPT) disks that would require enhanced inspection at each piece-part exposure.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design that are used on IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines registered in the United States, the proposed AD would supersede AD 2000–12–05 to add critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 734 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per engine to perform the proposed enhanced inspection for high pressure compressor (HPC) stage 3–8 drums, HPC stage 9–12 drum, HPC rear shaft, HPC rear rotating seal, and stages 3 through 7 low pressure turbine (LPT) disks. The average labor rate is $60 per work hour. The total cost of the added inspections per engine would be approximately $1,440. Using average shop visitation rates, the annual cost of the added inspections on U.S. operators is approximately $1,056,960.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11783 (65 FR 36783, June 12, 2000), and by adding a new airworthiness directive:

International Aero Engines AG: Docket No. 98–ANE–45–AD. Supersedes AD 2000–12–05, Amendment 39–11783.

Applicability: This airworthiness directive (AD) is applicable to International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. These engines are installed on, but not limited to Airbus Industrie A319, A320, and A321 series, and McDonnell Douglas MD–90 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an

assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within the next 90 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) located in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, part number (P/N) E–V2500–1IA and P/N E–V2500–3IA, and for air carrier operations revise the approved continuous airworthiness maintenance program, by

(1) Adding the following to paragraph 1, entitled ''Airworthiness Limitations:'' ''Refer to paragraph 2—Maintenace Scheduling for information that sets forth the operator's maintenance requirements for the V2500 On-Condition engine.''

(2) Adding the following paragraph 2, entitled ''Maintenance Scheduling:''

''Whenever a Group A part identified in this paragraph (*see* 4.0 for definition of Group A) satisfies both of the following conditions:

The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's engine manual; and

The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine; then that part is considered to be at the piece-part level and it is mandatory to perform the inspections for that part as specified in the following:

Part nomenclature	Part number (P/N)	Inspect per engine manual chapter
Fan Disk	All	Chapter 72–31–12, Subtask 72–31–12–230–054
Stage 1 HP Turbine Hub	All	Chapter 72–45–11, Task 72–45–11–200–002
Stage 2 HP Turbine Hub	All	Chapter 72–45–31, Task 72–45–31–200–004
High Pressure Compressor (HPC) Stage 3–8 Drum	All	Chapter 72–41–11, Task 72–41–11–200–001
HPC Stage 9–12 Drum	All	Chapter 72–41–12, Task 72–41–12–200–001
HPC Rear Shaft	All	Chapter 72–41–13, Task 72–41–13–200–001
HPC Stage Rear Rotating Seal	All	Chapter 72–41–14, Task 72–41–14–200–001
Stages 3 through 7 Low Pressure Turbine (LPT) Disks	All	Chapter 72–50–31, Task 72–50–31–200–006''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed only in accordance with the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, P/N E–V2500–1IA and P/N E–V2500–3IA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) of this chapter must maintain records of the mandatory inspections that result from revising the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, P/N E–V2500–1IA and P/N E–V2500–3IA, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on June 18, 2003.

Mark C. Fulmer,

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

[FR Doc. 03–15994 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1112–P]

RIN 1120–AB12

Good Conduct Time: Aliens With Confirmed Orders of Deportation, Exclusion, or Removal

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its rules on Good Conduct Time (GCT). The purpose of this proposed rule is to more effectively reduce the lengthy General Educational Development (GED) waiting lists and to reevaluate the ''satisfactory progress in a literacy program'' provision of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and/or the Prison Litigation Reform Act of 1995 (PLRA) for aliens with confirmed orders of deportation, exclusion, or removal. This proposed rule will increase the proportion of our literacy funds and resources that go to inmates who will remain in the U.S. after release.

This proposed rule will exempt such inmate aliens from the ''satisfactory progress in a literacy program'' provision of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and/or the Prison Litigation Reform Act of 1995 (PLRA). The Bureau's Literacy Program rules

currently comprise only GED attainment. This means that inmate aliens who have confirmed orders of deportation, exclusion, or removal, but do not have a high school diploma or GED, will not need to demonstrate satisfactory progress toward earning a GED credential to be considered for the full benefits of GCT. When considering GCT, we propose to allow 54 days GCT for each year served if the inmate is an alien with a confirmed order of deportation, exclusion, or removal from the Immigration and Naturalization Service (INS) (now referred to as the Bureau of Citizenship and Immigration Services (BCIS)).

In this document, we also propose to reorganize the rule for clarity and accuracy. Other than the substantive change regarding sentenced deportable aliens, we make no further substantive changes.

DATES: Comments are due by August 25, 2003.

ADDRESSES: Submit comments to Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Rule Change?

The purpose of this proposed rule is to more effectively reduce the lengthy General Educational Development (GED) waiting lists and to reevaluate the ''satisfactory progress in a literacy program'' provision of VCCLEA/PLRA for aliens with confirmed orders of deportation, exclusion, or removal. This proposed rule will increase the proportion of our literacy funds and resources that go to inmates who will remain in the U.S. after release.

VCCLEA/PLRA requires that inmates lacking a high school diploma or GED must participate satisfactorily in the literacy program to receive full benefits of GCT.

In November 1997, the Bureau's education staff implemented the literacy provision of VCCLEA and PLRA (*see* 28 CFR 544.70–544.75). Inmates sentenced under either of these two laws must enroll or re-enroll in a literacy program and make satisfactory progress towards earning a GED credential. If they do not do this, inmates may suffer negative consequences to their GCT credit. For PLRA inmates, this would mean not being eligible for the maximum, 54 days, of GCT (see 28 CFR 523.20(a)(1)). For VCCLEA inmates, this would result in their GCT not vesting.

Although we made extensive efforts to enroll as many inmates in literacy programs as possible, the waiting lists for enrollment in these programs grew from no appreciable waitlist in August 1997 to 11,397 in April 2003. Aliens with confirmed deportation orders represent a small fraction of all VCCLEA/PLRA sentenced inmates without a verified GED. On April 14, 2003, 6% of all VCCLEA/PLRA sentenced inmates without a verified GED were aliens with confirmed deportation orders (2,390 out of 39,562).

18 U.S.C. 3624(b)(4) gives the Director authority to make exemptions to the GED requirements as he deems appropriate. Through our literacy program, we help inmates compete for available jobs and cope with post-release community, family, and other responsibilities. Because we must concentrate our resources on inmates who will be released into U.S. communities, we will not require inmates with confirmed orders of deportation, exclusion, or removal to participate in the literacy program.

In this proposed rule, we make an exemption to the GED requirements to provide relief to the growing demand for literacy programs by amending 28 CFR 523.20 to allow the full benefit of GCT provisions for aliens with confirmed orders of deportation, exclusion, or removal. These inmates may still participate in the literacy program, even though it will not affect their GCT.

What Is the Bureau Proposing to Change?

We propose to change 28 CFR 523.20(a)(1) on Good Conduct Time to allow 54 days GCT for each year served if the inmate is an alien with a confirmed order of deportation, exclusion, or removal from the INS (BCIS). We published this rule as an interim final rule on September 26, 1997 (62 FR 50786). We received no public comment on that interim rule. This rulemaking is a change to the same interim rules.

This proposed rule will have the practical effect of exempting aliens with confirmed orders of deportation, exclusion, or removal from participating in the literacy program, as set forth in 28 CFR 544.70–544.75. The Bureau's Literacy Program, described in 28 CFR part 544, subpart H, currently comprises only GED attainment.

Such inmate aliens can vest (VCCLEA) or will retain eligibility for the full benefits of GCT (PLRA) even if they choose not to participate in the literacy program. However, the proposed rule does not prevent any of these inmates from participating in the literacy program.

In this document, we also propose to reorganize the rule for clarity and accuracy. Other than the substantive change regarding sentenced deportable aliens, we make no further substantive changes.

Who Will This Rule Affect?

This proposed rule will affect inmate aliens with confirmed orders of deportation, exclusion, or removal. These inmates will not need to participate in the literacy program to retain the maximum GCT credit of 54 days or to have their GCT vest.

Where Can I Send Comments, and How Will the Bureau Consider Them?

You can send written comments on this proposed rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments we receive during the comment period before we take final action. In light of comments we receive, we may change the proposed rule.

We do not plan to have oral hearings on this proposed rule. All the comments we receive will remain on file for public inspection at the above address.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a federalism assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial

number of small entities because: this rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 523

Prisoners.

Harley G. Lappin,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 523 as follows.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523—COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987, as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984, as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510.

2. Revise § 523.20 to read as follows:

§ 523.20 Good conduct time.

(a) For inmates serving a sentence for offenses committed on or after November 1, 1987, but before September 13, 1994, the Bureau will award 54 days credit toward service of sentence (good conduct time credit) for each year served. This amount is prorated when the time served by the inmate for the sentence during the year is less than a full year.

(b) For inmates serving a sentence for offenses committed on or after September 13, 1994, but before April 26, 1996, all yearly awards of good conduct time will vest for inmates who have earned, or are making satisfactory progress (*see* § 544.73(b) of this chapter) toward earning a General Educational Development (GED) credential.

(c) For inmates serving a sentence for an offense committed on or after April 26, 1996, the Bureau will award:

(1) 54 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a GED credential or high school diploma; or

(2) 42 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential or high school diploma.

(d) Notwithstanding the requirements of paragraphs (b) and (c) of this section, an alien who is subject to a final order of removal, deportation, or exclusion is eligible for, but is not required to, participate in a literacy program, or to be making satisfactory progress toward earning a General Educational Development (GED) credential, to be eligible for a yearly award of good conduct time.

(e) The amount of good conduct time awarded for the year is also subject to disciplinary disallowance (*see* tables 3 through 6 in § 541.13 of this chapter).

[FR Doc. 03–15823 Filed 6–24–03; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0121; FRL–7302–2]

Pesticides; Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contact Surface Sanitizing Solutions)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add a new section to part 180 which lists the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions. The initial list of exempt pesticide chemicals in the new section is duplicated from the Food and Drug Administration's (FDA) regulations in 21 CFR 178.1010. EPA is also changing FDA's naming conventions for some of the chemical substances that were duplicated.

Until recently, FDA under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 409, regulated food-contact surface sanitizing solutions. With the amendments to FFDCA by the Food Quality Protection Act (FQPA) of 1996 and by the Antimicrobial Regulation Technical Corrections Act (ARTCA) of 1998, these responsibilities have been restructured. Under FFDCA section 408, EPA will now regulate the pesticide uses of these chemical substances and FDA under FFDCA section 409 will continue to regulate any indirect food additive uses of these chemical substances.

Registrants of existing food-contact surface sanitizing solutions that contain chemical substances other than those listed in this proposed rule should identify these chemical substances and support their claim that the chemical substance is generally recognized as safe (GRAS), or permitted by FDA prior sanction, or approval, or subject to a letter of no objection in order to remain exempt from the requirement of a FFDCA section 408 tolerance.

DATES: Comments, identified by docket ID number OPP–2003–0121, must be received on or before July 25, 2003.

Registrants should identify chemical substances not listed in this document and support their claims of GRAS, or prior sanction, or approval, or no objection of these chemical substances by submission of such information to the person listed under **FOR FURTHER INFORMATION**, on or before October 1, 2003.

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**.

Registrants identifying chemical substances not listed in this document and the supporting documentation for their claims of GRAS, or prior sanction, or approval, or no objection of these chemical substances for inclusion in 40 CFR 180.940 should submit the information directly to the person listed under **FOR FURTHER INFORMATION**.

Identification of a chemical substance is not a comment and should be identified as ''Submission of Non-designated Prior Approved Substance.''

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; fax number: (703) 305–0599; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

- Food manufacturing (NAICS 311)
- Antimicrobial pesticides (NAICS 32561)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0121. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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–2003–0121. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to: *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0121. 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–2003–0121.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0121. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

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

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

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What is the Agency's Authority for Taking this Action?

This proposed rule is issued under FFDCA section 408, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), and ARTCA (Public Law 105–324).

Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Section 408(j)(2) of FFDCA provides that all regulations issued by FDA under FFDCA section 409 that stated conditions for safe use of substances that are now, post-FQPA, considered pesticide chemical residues in or on processed food or that otherwise stated the conditions under which such pesticide chemicals could be safely used, shall be deemed to be regulations issued under FFDCA section 408.

Due to the FQPA and ARTCA amendments to FFDCA, those chemical substances originally regulated by FDA under FFDCA section 409 as food-contact surface sanitizing solutions are now the responsibility of EPA. These pesticide chemical regulations are now subject to modification or revocation at EPA's initiative under FFDCA section 408(e). The Agency is proposing to duplicate the substance of FDA's food additive regulations for those chemical substances found in 21 CFR 178.1010 which are now pesticide tolerance exemptions in a format consistent with EPA's authority under section 408 in a new section, 40 CFR 180.940.

EPA's rulemaking activity will have no effect on any of the FDA regulated FFDCA section 409 food additive regulations in 21 CFR 178.1010.

III. Summary of this Action

A. Why is There an Overlap of EPA's and FDA's Regulatory Authorities?

Since EPA was created in 1970, EPA and FDA have shared authority under FFDCA over pesticide chemical residues in food. Enactment of FQPA in 1996 amended FFDCA, and shifted to EPA regulatory authority over certain pesticide residues which were previously subject to FDA authority. Prior to 1996, products used to sanitize or disinfect permanent or semi-permanent food-contact surfaces were regulated by FDA as indirect food additives under FFDCA section 409. Under the FQPA and ARTCA amendments to FFDCA, antimicrobial formulations used on permanent or semi-permanent food-contact surfaces other than food packaging are now considered ''pesticide chemicals'' and are regulated by EPA under FFDCA section 408.

FQPA added a provision to FFDCA to assure an orderly transition to the new regulatory system. Section 408(j)(2) of FFDCA provides that all food additive regulations issued under FFDCA section 409 prior to the enactment of FQPA for antimicrobial uses that became pesticide chemical uses subsequent to FQPA and that were not affected by ARTCA shall be deemed to be regulations issued under FFDCA section 408. Thus, FQPA converted existing food additive regulations issued by FDA under FFDCA section 409, for chemical substances that post-FQPA became pesticide chemicals, into FFDCA section

408 pesticide chemical tolerances or tolerance exemptions. This ''grandfather'' provision of FFDCA section 408(j) assures that pesticide chemical residues conforming to regulations issued under the authority of FFDCA section 409 will not render food adulterated as a result of the jurisdictional shift from FDA to EPA.

In 1998, ARTCA amended the definition of ''pesticide chemical'' in FFDCA section 201(q) so as to exclude certain antimicrobial pesticide residues from the authority of FFDCA section 408. Consistent with FFDCA section 408(j)(4), these residues now fall within the authority of FFDCA section 409. As a result, certain uses of food-contact surface sanitizing solutions identified in FDA's regulations at 21 CFR 178.1010 remain subject to FFDCA section 409 regulations just as they did pre-FQPA, while other uses are now subject to EPA's jurisdiction under FFDCA section 408.

B. Why are these Tolerance Exemptions not Subject to Tolerance Reassessment at this Time?

Under FFDCA section 408(q), EPA is required to reassess all tolerance exemptions that were in effect on the day before the enactment of the FQPA. The tolerance exemptions for inert ingredients as well as those active ingredients not yet completed will be reassessed in accordance with EPA's schedule for tolerance reassessment published in the **Federal Register** of August 4, 1997 (62 FR 42019) (FRL–5734–6).

The tolerance exemptions in this proposed rule to be codified in 40 CFR 180.940 already exist as valid FFDCA section 408 regulations. FDA promulgated the food additive regulations in 21 CFR 178.1010 under the authority of FFDCA section 409 prior to the enactment of FQPA. By operation of FFDCA section 408(j)(2), those portions of 21 CFR 178.1010 that pertain to chemical substances that are pesticide chemicals post-FQPA and remain as such post-ARTCA were converted to FFDCA section 408 tolerance exemptions. EPA's duplication of these tolerance exemptions is not ''establishing, modifying, or revoking a tolerance'' under FFDCA section 408(b). EPA is, therefore, not required to conduct a full reassessment of these tolerance exemptions at this time.

C. Why is 40 CFR 180.940 being Created?

The Agency is duplicating in 40 CFR 180.940 only those portions of the regulations in 21 CFR 178.1010 that pertain to pesticide chemicals. This duplication will have no effect on any of FDA's regulated FFDCA section 409 food additive regulations in 21 CFR 178.1010.

In establishing food additive regulations for food-contact surface sanitizing solutions in 21 CFR 178.1010, FDA used a formulation-specific approach. Consistent with its authority under FFDCA section 409, FDA issued regulations prescribing the conditions under which food-contact surface sanitizing solutions might be safely used. FDA approved the use of each food-contact surface sanitizing solution formulation as a whole, rather than regulating each component chemical substance individually. In addition, FDA included a generic exemption for any chemical substance considered to be GRAS, and in some cases, issued letters not objecting to certain additional chemical substances in the formulations.

By contrast, FFDCA section 408 authorizes EPA to issue regulations establishing tolerances or exemptions from the requirement of a tolerance. EPA's practice has been to issue these regulations on a chemical-specific basis, whereby each ingredient in the product is the subject of a separate tolerance or exemption regulation. Food-contact surface sanitizing solutions meet the requirements of FFDCA if each ingredient has an appropriate clearance under FFDCA, either a tolerance or an exemption from the requirement of a tolerance, and any conditions on the clearance are observed.

Translating the regulatory decisions made by FDA into a comparable EPA scheme requires considerably greater work on EPA's part than merely copying those portions of the existing regulations in 21 CFR 178.1010 that pertain to pesticide chemicals directly into 40 CFR 180.940. EPA must disaggregate the formulations in 21 CFR 178.1010 that pertain to pesticide chemicals into their component ingredients. EPA must also provide a mechanism to address those ingredients not identified by name in 21 CFR 178.1010 but that were, for example, permitted by prior sanction or approval, not objected to, or generally recognized as safe. This, in fact, places a higher initial demand on EPA resources than would be required to simply copy FDA's approach. However, EPA is convinced that the long-term administrative convenience of using a consistent regulatory scheme for all pesticide chemicals subject to FFDCA section 408 outweighs the initial burdens.

FDA's formulation-specific approach is different from EPA's chemical-specific approach. Under EPA's approach, a tolerance exemption would be approved once for each particular pesticide chemical, and would not need to be repeated as new products containing that chemical substance enter the market. EPA's approval process is not complex, will allow for a wide variety of potential products, and fosters innovative formulation approaches. In addition, by listing in one place (40 CFR 180.940) all chemical substances exempted from the requirement of a tolerance when used in food-contact surface sanitizing solutions, EPA's approach will increase the transparency of its regulatory process.

This duplication will not allow any residues beyond those already permitted by 21 CFR 178.1010. EPA believes that the chemical-specific approach and FDA's formulation-specific approach are equivalent from a risk management perspective, inasmuch as each would result in the same levels of residues from these chemical substances.

As part of the duplication, EPA changed the naming conventions (chemical nomenclature), as well as combining, as appropriate, chemical substances that appear in 21 CFR 178.1010 under two or more names under a single name. The Agency has attempted to identify each of the listed chemical substances using the Chemical Abstracts Service Registry Number (CAS No.). The CAS No. provides one of the most distinct and universally accepted means of identifying chemical substances. Generally, there will be only one CAS No. per listed chemical substance; however, it is possible that more than one CAS No. may be appropriate for some chemical substances. The lack of a CAS No. will not preclude EPA from including chemical substances in 40 CFR 180.940.

The lower-concentration limits specified in 21 CFR 178.1010 are not included in 40 CFR 180.940 because of the differences between FDA's approach and EPA's approach. Although EPA establishes tolerance exemptions for use in food-contact surface sanitizing solutions under FFDCA, all pesticide products must also meet the criteria for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) before being offered for sale. EPA relies on conditions imposed through the FIFRA registration process to address safety and for antimicrobial-formulated products efficacy. Accordingly, the lower limits on concentrations of pesticide chemicals, that appear in 21 CFR 178.1010 will not appear in 40 CFR 180.940. Three types of food-contact surface sanitizing

solutions are described in 21 CFR 178.1010:

- Those used on food-contact surfaces in public eating places.
- Those used on dairy-processing equipment.
- Those used on food-processing equipment and utensils.

According to FDA, food-contact surface sanitizing solutions that are acceptable for use on food-contact surfaces in public eating places can also be used on dairy-processing equipment, and on food-processing equipment and utensils. Food-contact surface sanitizing solutions that are acceptable for use on dairy equipment can also be used on food-processing equipment and utensils. EPA has separated the component ingredients by both chemical and concentration for these three types of food-contact surface sanitizing solutions, which will be included in 40 CFR 180.940.

IV. Issuance and Withdrawal of Direct Final Rule

In the **Federal Register** of December 3, 2002 (67 FR 71847) (FRL–6824–2), the Agency published a direct final rule to establish 40 CFR 180.940. Comments were received. In the December 3, 2002 **Federal Register** notice, EPA announced that it would withdraw the direct final rule if it received adverse comment, and proceed with proposed rule as provided by section 553 of the Administrative Procedure Act, 5 U.S.C. 553. Because some of the comments were of a nature that would warrant a response if made on a proposed rule, they are adverse comments that require withdrawal of the direct final rule. Accordingly, EPA withdrew the direct final rule on March 24, 2003 (68 FR 14165) (FRL–7299–4).

Several of the comments reflected some understandable confusion on the part of the commenters. While EPA's chemical-specific approach and FDA's formulation specific approach are essentially equivalent, the two approaches look and read differently. EPA disaggregated the 46 formulations in 21 CFR 178.1010 into a list of chemicals. This list of chemicals was then subdivided into three separate lists based on use categories in 21 CFR 178.1010 (i.e., food-contact surfaces in public eating places, dairy processing equipment, and food-processing equipment and utensils). The 40 CFR 180.940(a) list contains only the chemicals specified in those formulations that were designated by FDA for use in public eating places. The 40 CFR 180.940(b) list contains only the chemicals specified in those formulations that were designated by FDA for use on dairy equipment. The 40 CFR 180.940(c) list contains all chemicals because all formulations in 21 CFR 178.1010 can be used on food-processing equipment and utensils.

The maximum concentration level for each chemical was determined by evaluating the range derived from the lists in 40 CFR 180.940(a), (b), or (c). Where 21 CFR 178.1010 authorized several different sanitizing solutions each containing a particular chemical, but at different concentrations, EPA will use only the highest concentration as the upper limit, reflecting FDA's implicit determination that concentrations up to and including that limit do not compromise food safety. As an example, if three solutions authorized under 21 CFR 178.1010 for use on dairy equipment contain chemical ''X'' at concentrations of 150, 200, and 240 parts per million (ppm), then 240 ppm would be used as the upper limit in 40 CFR 180.940(b). If for chemical ''Y,'' concentrations of 150 and 200 ppm were specified, but in a third solution the concentration was not specified, then the upper limit for chemical ''Y '' in 40 CFR 180.940(c) would be specified as ''none.'' This reflects FDA's implicit determination in regard to that third sanitizing solution that chemical ''Y '' could be used in any concentration without significant risk to food safety.

In addition to the disaggregation, the Agency also in some cases used a different chemical nomenclature. CI (chemical index) names and CAS Nos. were used to the greatest extent possible. This is part of an Agency-wide effort to provide a common and consistent way to identify and represent chemical substances across the Agency. Thus, sodium hypochlorite became hypochlorous acid, sodium salt. In other instances (most commonly involving polymers or quaternary ammonium compounds), FDA approved in one solution a particular chemical that falls within a more inclusive chemical designation approved in another solution. If practicable in such instances, EPA has stated the tolerance exemption only in terms of the more inclusive chemical designation, implicitly exempting all chemical substances that fall within that designation. For example, n-alkyl (C_{12}–C_{16}) benzyl dimethyl ammonium chloride would be considered to be a subset of n-alkyl (C_{12}–C_{18}) benzyl dimethyl ammonium chloride. Another example, n-alkyl (C_{12}–C_{18}) benzyl dimethyl ammonium chloride (mw 351 to 380) would also be considered a subset of n-alkyl (C_{12}–C_{18}) benzyl dimethyl ammonium chloride. Both of the example chemicals would be accounted for under the nomenclature quaternary ammonium compounds alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides. For each comment questioning whether a particular chemical substance appeared in the direct final rule, the Agency was able to verify that the chemical for which the commenter expressed concern was included in 40 CFR 180.940, albeit under a different designation.

A commenter asked that instead of using the term ''oxychloro species,'' that sodium chlorite or chlorine dioxide should be used instead. The ''generated by'' language was considered to be confusing in a listing of chemical names. The Agency (as acknowledged by the commenter) used FDA's language, which is an approach which describes the process for generating the solution, not the components of the solution. If the end-products of the generation process were specific chemicals already included in the other solutions (and therefore already line-items), then the Agency used the disaggregated approach. However, for the oxychloro species generation methods described in 21 CFR 178.1010(b)(34), the chlorite, chlorate, and/or chlorine dioxide is actually an equilibrium mixture. There are no separate line-item entries for these chemicals. In fact, the upper concentration limit is specified in terms of chlorine dioxide only, thus making it difficult to separate the chemicals into line items. The Agency determined therefore to maintain the original FDA language at this time. The Agency also considered that other generation methods for oxychloro species could be submitted as part of the non-designated prior approved chemical substances, which could impact the handling of this in the future.

Several commenters asked if a specific combination of quaternary ammonium compounds expressly identified in 21 CFR 178.1010(b)(22) were included in 40 CFR 180.940. Each of the component chemicals identified in 21 CFR 178.1010(b)(22) are identified in 40 CFR 180.940 as subject to a tolerance exemption. The two components listed in 21 CFR 178.1010(b)(22) are di-n-alkyl (C_8–C_{10}) dimethylammonium chloride (mw 332 to 361) and n-alkyl (C_{12}–C_{18}) benzyl dimethyl ammonium chloride (mw 351 to 380). The first chemical is listed in 40 CFR 180.940 as ''Quaternary ammonium compounds, di-n-alkyl (C_8–C_{10}) dimethyl ammonium chloride average molecular weight (in amu) 332 to 361.'' 21 CFR 178.1010(b)(22) and 21 CFR 178.1010(c)(17) together allow a maximum end-use concentration of 400

ppm of the two quaternary ammonium compounds in this solution, of which this particular chemical must comprise 60%. EPA's regulation exempts this chemical substance from the requirement of a tolerance in sanitizing solutions up to 240 ppm, which is 60% of the 400 ppm authorized in the FDA regulations. The second chemical is listed in 40 CFR 180.940 as ''Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides.'' The end use concentration as specified in 21 CFR 178.1010(b)(22) and 21 CFR 178.1010(c)(17) for this chemical would be 40% of 400 ppm or 160 ppm. Because other solutions in 21 CFR 178.1010 included chemical substances within the description ''quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides'' without molecular weight limitations and/or with higher concentration limits, the description of this chemical in 40 CFR 180.940 is more broad than that of 21 CFR 178.1010(b)(22).

Based on one comment, the Agency was made aware of a typographical error in the December 3, 2002 **Federal Register** notice which has been corrected in this notice of proposed rulemaking. In 40 CFR 180.940(a) the upper limit should be not 150 ppm, but 200 ppm for C_{12}–C_{16} benzyl dimethyl ammonium chloride (mw 351–380). With the change in upper limit to 200 ppm, C_{12}–C_{16} benzyl dimethyl ammonium chloride (mw 351 to 380) can be appropriately held under the more inclusive quaternary ammonium compounds alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides.

Another commenter requested that the Agency change the language describing the upper limit concentration for all quaternary ammonium compounds. The commenter has suggested the use of the phrase ''when ready to use, the end-use concentration is not expected to exceed 'X' ppm of this active quaternary ammonium compound,'' instead of the phrasing used by the Agency ''when ready for use, concentration is not to exceed 'X' ppm of active quaternary compound.'' The commenter cited the concern that state enforcement personnel would apply the limitation for a particular quaternary ammonium compound to a mixture. The Agency believes that the language it has used is clear and concise. The concentration limits specified in 40 CFR 180.940 apply only to the chemical substance described in the particular table entry. However, the 30-day comment period will allow the Agency to take further comment on this issue.

A commenter asked that the Agency not distinguish between food-contact surfaces in public eating places, dairy-processing equipment, and food processing equipment and utensils. These categories were originally created by the FDA and reflect different assumptions especially with regard to dietary exposure to sanitizer residues, and thus are an intrinsic part of FDA's risk assessments. Although EPA has the authority to reconsider FDA's risk assessments, EPA can do so only upon fully reassessing these tolerance exemptions in accordance with FFDCA section 408, as amended by FQPA. EPA is not reassessing these tolerance exemptions at this time, but instead merely duplicating FDA's previous clearances in a format consistent with EPA's authority under FFDCA section 408. EPA is required under FFDCA section 408(q)(1)(C) to complete tolerance reassessment for all pesticide chemicals by 2006, and will consider the commenter's suggestion during tolerance reassessment.

Although not raised by commenters, EPA has made three additional changes from the December 3, 2003 **Federal Register** notice. D&C Blue No.1 (methylene blue) is now referenced as methylene blue. Similarly, FD&C Yellow No. 5 (tartrazine) is now referenced as FD&C Yellow No. 5. A CAS No. was added to one entry (quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides) in 40 CFR 180.940(a).

V. Addition of Non-Designated, Prior Approved Chemical Substances

21 CFR 178.1010 allows the use of GRAS chemical substances and chemical substances ''permitted by prior sanction or approval,'' that are not expressly identified. These chemical substances were subject to the sanitizer formulation approval under FDA's regulation before these uses became FFDCA section 408 tolerance exemptions under FFDCA section 408(j)(2). Accordingly, many food-contact sanitizing solutions that presently are authorized for use under 21 CFR 178.1010 contain ingredients which are not identified in this direct final rule. As discussed in this unit, EPA is asking registrants to identify these other ingredients that they believe should be included in 40 CFR 180.940. EPA intends to publish a revision to 40 CFR 180.940 adding these chemical substances. In the interim, to preserve the use of food-contact surface sanitizing solutions that were cleared for use before FQPA's enactment and that contain chemical substances that are not specifically identified in 21 CFR 178.1010, EPA has decided to honor those approvals under 21 CFR 178.1010 until EPA has received and reviewed registrant's claims with respect to unspecified pesticide chemicals, as discussed in this unit.

FDA's regulations (21 CFR 178.1010(b)) allowed the addition to food-contact surface sanitizing solutions of GRAS components, and components permitted by prior sanction or approval or subject to a letter of no objection. Much of this information should be in EPA's files. The Agency will access this information. However, EPA may not have ready access to all information on all chemicals in existing food-contact surface sanitizing solution formulations which could meet these criteria. Submission of this information to EPA would also reduce the possibility of an existing food-contact surface sanitizing solution having a component that lacks a tolerance exemption under 40 CFR 180.940. Therefore, registrants who believe that components of their food-contact surface sanitizing solutions are exempted under 21 CFR 178.1010(b) should advise EPA in writing that these chemical substances (along with the CAS No.) should be included in 40 CFR 180.940. The submission of this information facilitates EPA's process for adding these chemical substances cleared under 21 CFR 178.1010(b), but not specifically listed by name, to 40 CFR 180.940. The EPA will also need any available information documenting the claim that the component is GRAS, prior sanctioned or approved, or subject to a letter of no objection.

Claims and supporting documentation should be sent to the person listed under **FOR FURTHER INFORMATION CONTACT**. Claims are not comments on this direct final rule and should be identified on the subject line as ''Submission of Non-designated Prior Approved Chemical Substance.'' If you have any questions about the many types of information that could be submitted please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. The Agency does not anticipate that registrants will be required to submit an excessive amount of information, and, in fact, believes that most registrants will be able to submit the necessary information with minimal effort. EPA will review and evaluate the information provided. Chemical substances identified in claims received not later than October 1, 2003, may be eligible for inclusion in 40 CFR 180.940 under FFDCA section 408(j)(2). EPA anticipates publishing a notice of proposed rulemaking identifying those chemical substances shortly after that date.

VI. Statutory and Executive Order Reviews

This proposed rule would add a new § 180.940 to 40 CFR part 180, subpart D, which lists the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions. The initial list duplicates pesticide chemicals in 40 CFR 180.940 that are active and inert ingredients listed in 21 CFR 178.1010. Since this proposed rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed rule does not 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).

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 proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed 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 proposed 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 proposed rule.

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the creation of a new section 180.940 will not have significant negative economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. This proposed rule does not impose any requirements, it establishes exemptions from the requirement for a tolerance. The Agency is, however, also commencing a process whereby EPA will require certain persons to identify chemical substances considered to be GRAS (which could include self-affirmed GRAS chemicals), or permitted by prior sanction or approval in existing food contact surface sanitizing solutions. The information available to the Agency indicates that fewer than 500 companies have approximately 1,300 products that could fall under this category. EPA anticipates the economic burden on small entities to be minor, since the Agency is only asking for confirmation that the chemical substances considered to be GRAS or permitted by prior sanction or approval in existing food contact surface sanitizing solutions are in fact part of an existing formulation, and information as to why the chemical is considered to be GRAS, or a copy of an FDA letter not objecting to the use of a chemical substance. By contrast, this proposed rule will be beneficial to the regulated community by increasing the number of inert ingredients for use in antimicrobial formulations and by reducing the regulatory burden on persons seeking to market new combinations of ingredients for certain hard surface sanitizing solutions. Additionally, this proposed rule will provide a more transparent listing of pesticide chemicals used in food-contact surface sanitizing solutions to the public.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

This proposed rule does not impose any new information collection requirements that would require separate approval by OMB under the PRA. Under 5 CFR 1320.3(h), the request for information discussed in Unit V. is not subject to approval under the PRA, and the information collection activities related to the Agency's tolerance exemption process have already been approved by OMB under OMB control numbers 2070–0024 (EPA ICR No. 597). The annual ''respondent'' (petitioner) burden for the pesticide tolerance petitions program is estimated to average 1,726 hours per petition. According to the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other

required paperwork, and storing, filing, and maintaining the data. Send comments regarding this burden estimate or any other aspect of the collection activity, including suggestions for reducing the burden to: Director, Collection Strategies Division (2822), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Include the OMB control number 2070–0024 in any correspondence about this collection activity, but do not submit the requested information or forms to this address.

List of Subjects in 40 CFR Part 180

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 2003.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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. A new § 180.940 is added to subpart D of part 180 to read as follows.

§ 180.940 Food-contact surface sanitizing solutions; exemptions from the requirement of a tolerance.

Residues of the following chemical substances are exempted from the requirement of a tolerance when used in accordance with good manufacturing practice as ingredients in an antimicrobial pesticide formulation, provided that the chemical substance is applied on a semi-permanent or permanent food-contact surface (other than being applied on food packaging) with adequate draining before contact with food.

(a) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 290 parts per million (ppm)
α-Alkyl(C_{10}–C_{14})-ω-hydroxypoly(oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837	None	None
α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1,120	None	None
Ammonium chloride	12125–02–9	When ready for use, the end-use concentration is not to exceed 48 ppm
Dextrin	9004–53–9	When ready for use, the end-use concentration is not to exceed 16 ppm
Ethanol	64–17–5	None
Ethylenediaminetetraacetic acid (EDTA), tetrasodium salt	64–02–8	None
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 91 ppm
Hypochlorous acid, sodium salt	7681–52–9	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Magnesium oxide	1309–48–4	None
Methylene blue	61–73–4	When ready for use, the end-use concentration is not to exceed 0.4 ppm
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) average poly(oxyethylene) content 11 moles)	None	None
Octadecanoic acid, calcium salt	1592–23–0	When ready for use, the end-use concentration is not to exceed 16 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 46 ppm of total active fatty acids
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 52 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, minimum molecular weight (in amu), 1,900	9003–11–6	None

Pesticide chemical	CAS No.	Limits
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 58 ppm
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 52 ppm
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 14 ppm
Phosphoric acid, trisodium salt	7601–54–9	When ready for use, the end-use concentration is not to exceed 5,916 ppm
Potassium bromide	7758–02–3	When ready for use, the end-use concentration is not to exceed 46 ppm total available halogen
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Potassium permanganate	7722–64–7	When ready for use, the end-use concentration is not to exceed 0.7 ppm
2-Propanol (isopropanol)	67–63–0	None
Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides	8001–54–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{14}) dimethyl ethylbenzyl ammonium chloride, average molecular weight (in amu), 377 to 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds n-alkyl (C_{12}–C_{18}) dimethyl ethylbenzyl ammonium chloride average molecular weight (in amu), 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds di-n-alkyl (C_8–C_{10}) dimethyl ammonium chloride, average molecular weight (in amu), 332 to 361	None	When ready for use, the end-use concentration is not to exceed 150 ppm of active quaternary compound
Sodium bicarbonate	144–55–8	When ready for use, the end-use concentration is not to exceed 120 ppm
Starch	9005–25–8	When ready for use, the end-use concentration is not to exceed 16 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	When ready for use, the end-use concentration is not to exceed 3 ppm
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, sodium salt	2893–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine

(b) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Dairy-processing equipment and food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 686 ppm
Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide	68608–66–2	When ready for use, the end-use concentration is not to exceed 42 ppm chloroacetic acid
Benzenesulfonic acid, dodecyl-	27176–87–0	When ready for use, the end-use concentration is not to exceed 5.5 ppm
Butanedioic acid, octenyl-	28805–58–5	When ready for use, the end-use concentration is not to exceed 156 ppm
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, minimum average molecular weight (in amu), 2400	None	None
Calcium chloride	10043–52–4	When ready for use, the end-use concentration is not to exceed 17 ppm

Pesticide chemical	CAS No.	Limits
n-Carboxylic acids (C_6–C_{12}), consisting of a mixture of not less than 56% octanoic acid and not less than 40% decanoic acid	None	When ready for use, the end-use concentration is not to exceed 39 ppm
Citric acid	77–92–9	None
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 90 ppm total active fatty acids
Ethanesulfonic acid, 2-[cyclohexyl (1-oxohexadecyl)amino]-, sodium salt	132–43–4	When ready for use, the end-use concentration is not to exceed 237 ppm
Ethylenediaminetetraacetic acid (EDTA), disodium salt	139–33–3	When ready for use, the end-use concentration is not to exceed 1,400 ppm
FD&C Yellow No. 5 (conforming to 21 CFR 74.705)	1934–21–0	None
D-Gluconic acid, monosodium salt	527–07–1	When ready for use, the end-use concentration is not to exceed 760 ppm
Hydriodic acid	10034–85–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 465 ppm
Hypochlorous acid	7790–92–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Lactic acid	50–21–5	When ready for use, the end-use concentration is not to exceed 138 ppm
α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8–9 moles ethylene oxide, average molecular weight (in amu), 400	None	None
Nonanoic acid	112–05–0	When ready for use, the end-use concentration is not to exceed 90 ppm
1-Octanamine, N,N-dimethyl-	7378–99–6	When ready for use, the end-use concentration is not to exceed 113 ppm
1,2-Octanedisulfonic acid	113669–58–2	When ready for use, the end-use concentration is not to exceed 102 ppm
1-Octanesulfonic acid	3944–72–7	When ready for use, the end-use concentration is not to exceed 172 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 297 ppm
1-Octanesulfonic acid, 2-sulfino-	113652–56–5	When ready for use, the end-use concentration is not to exceed 102 ppm
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 176 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis[propanol] (4:1)	11111–34–5	When ready for use, the end-use concentration is not to exceed 20 ppm in the formulated product
Oxychloro species (including chlorine dioxide) generated by acidification of an aqueous solution of sodium chlorite	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide'' (50–250 ppm available chlorine dioxide)
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 315 ppm
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 122 ppm

Pesticide chemical	CAS No.	Limits
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 34 ppm
Phosphoric acid	7664–38–2	None
Phosphoric acid, monosodium salt	7558–80–7	When ready for use, the end-use concentration is not to exceed 350 ppm
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 297 ppm
2-Propanol (isopropanol)	67–63–0	
2,6-Pyridinedicarboxylic acid	499–83–2	When ready for use, the end-use concentration is not to exceed 1.2 ppm
Sodium mono-and didodecylphenoxy-benzenedisulfonate	None	When ready for use, the end-use concentration is not to exceed 1,920 ppm
Sulfuric acid	7664–93–9	When ready for use, the end-use concentration is not to exceed 288 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	When ready for use, the end-use concentration is not to exceed 350 ppm

(c) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 686 ppm
Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide	68608–66–2	When ready for use, the end-use concentration is not to exceed 42 ppm chloroacetic acid
α-Alkyl(C_{10}–C_{14})-ω-hydroxypoly(oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837	None	None
α-Alkyl(C_{11}–C_{15})-ω-hydroxypoly(oxyethylene) with ethylene oxide content 9 to 13 moles	None	None
α-Alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) polyoxypropylene, average molecular weight (in amu), 965	None	None
α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1,120	None	None
Alkyl (C_{12}–C_{15}) monoether of mixed (ethylene-propylene) polyalkylene glycol, cloud point of 70–77 °C in 1% aqueous solution, average molecular weight (in amu), 807	None	None
Ammonium chloride	12125–02–9	When ready for use, the end-use concentration is not to exceed 48 ppm
Benzenesulfonamide, N-chloro-4-methyl, sodium salt	127–65–1	None
Benzenesulfonic acid, dodecyl-	27176–87–0	When ready for use, the end-use concentration is not to exceed 400 ppm
Benzenesulfonic acid, dodecyl-, sodium salt	25155–30–0	When ready for use, the end-use concentration is not to exceed 430 ppm
Benzenesulfonic acid, oxybis[dodecyl-	30260–73–2	When ready for use, the end-use concentration is not to exceed 474 ppm
[1,1'-Biphenyl]-2-ol	90–43–7	When ready for use, the end-use concentration is not to exceed 400 ppm

Pesticide chemical	CAS No.	Limits
Boric acid, sodium salt	7775–19–1	
Butanedioic acid, octenyl-	28805–58–5	When ready for use, the end-use concentration is not to exceed 156 ppm
Butanedioic acid, sulfo-, 1,4-dioctyl ester, sodium salt	1639–66–3	None
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, cloudpoint of 90–100 °C in 0.5 aqueous solution, average molecular weight (in amu), 3,300	None	None
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, minimum average molecular weight (in amu), 2,400	None	None
Calcium bromide	7789–41–5	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Calcium chloride	10043–52–4	When ready for use, the end-use concentration is not to exceed 17 ppm
n-Carboxylic acids (C_6–C_{12}), consisting of a mixture of not less than 56% octanoic acid and not less than 40% decanoic acid	None	When ready for use, the end-use concentration is not to exceed 39 ppm
Citric acid	77–92–9	None
3-Cyclohexene-1-methanol, α,α,4-trimethyl-	98–55–5	None
1-Decanaminium, N-decyl-N, N-dimethyl-, chloride	7173–51–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 234 ppm total active fatty acids
Dextrin	9004–53–9	When ready for use, the end-use concentration is not to exceed 16 ppm
Ethanesulfonic acid, 2-[cyclohexyl (1-oxohexadecyl)amino]-, sodium salt	132–43–4	When ready for use, the end-use concentration is not to exceed 237 ppm
Ethanol	64–17–5	None
Ethanol, 2 butoxy-	111–76–2	None
Ethanol, 2-(2-ethoxyethoxy)-	111–90–0	None
Ethylenediaminetetraacetic acid (EDTA), disodium salt	139–33–3	When ready for use, the end-use concentration is not to exceed 1,400 ppm
Ethylenediaminetetraacetic acid (EDTA), tetrasodium salt	64–02–8	None
Fatty acids, coco, potassium salts	61789–30–8	None
Fatty acids, tall-oil, sulfonated, sodium salts	68309–27–3	When ready for use, the end-use concentration is not to exceed 66 ppm
FD&C Yellow No. 5 (conforming to 21 CFR 74.705)	1934–21–0	None
D-Gluconic acid, monosodium salt	527–07–1	When ready for use, the end-use concentration is not to exceed 760 ppm
Hydriodic acid	10034–85–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 1,100 ppm
Hypochlorous acid	7790–92–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Hypochlorous acid, calcium salt	7778–54–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine

Pesticide chemical	CAS No.	Limits
Hypochlorous acid, lithium salt	13840–33–0	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine and 30 ppm lithium
Hypochlorous acid, potassium salt	7778–66–7	When ready for use, the end-use concentration is not to exceed 200 ppm determined as available chlorine
Hypochlorous acid, sodium salt	7681–52–9	When ready for use, the end-use concentration is not to exceed 200 ppm determined as available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Lactic acid	50–21–5	None
α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8-9 moles ethylene oxide, average molecular weight (in amu), 400	None	None
Magnesium oxide	1309–48–4	None
Methylene blue	61–73–4	When ready for use, the end-use concentration is not to exceed 0.4 ppm
Naphthalene sulfonic acid, sodium salt	1321–69–3	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives	None	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives alkylated at 3% by weight with C_6–C_9 linear olefins	None	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Neodecanoic acid	26896–20–8	When ready for use, the end-use concentration is not to exceed 174 ppm
Nonanoic acid	112–05–0	When ready for use, the end-use concentration is not to exceed 90 ppm
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) maximum average molecular weight (in amu), 748	None	None
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) average poly(oxyethylene) content 11 moles	None	None
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole p-nonylphenol with 9 to12 moles ethylene oxide	None	None
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene), 9 to 13 moles ethylene oxide	None	None
Octadecanoic acid, calcium salt	1592–23–0	When ready for use, the end-use concentration is not to exceed 16 ppm
9-Octadecenoic acid (9Z)-, sulfonated	68988–76–1	When ready for use, the end-use concentration is not to exceed 312 ppm
9-Octadecenoic acid (9Z)-sulfonated, sodium salts	68443–05–0	When ready for use, the end-use concentration is not to exceed 200 ppm
1-Octanamine, N,N-dimethyl-	7378–99–6	When ready for use, the end-use concentration is not to exceed 113 ppm
1,2-Octanedisulfonic acid	113669–58–2	When ready for use, the end-use concentration is not to exceed 102 ppm
1-Octanesulfonic acid	3944-72–7	When ready for use, the end-use concentration is not to exceed 172 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 312 ppm

Pesticide chemical	CAS No.	Limits
1-Octanesulfonic acid, 2-sulfino-	113652–56–5	When ready for use, the end-use concentration is not to exceed 102 ppm
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 234 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, minimum molecular weight (in amu), 1,900	9003–11–6	None
Oxirane, methyl-, polymer with oxirane, block, average molecular weight (in amu), 1,900	106392–12–5	None
Oxirane, methyl-, polymer with oxirane, block, minimum average molecular weight (in amu), 2,000	None	None
Oxirane, methyl-, polymer with oxirane, block, 27 to 31 moles of polyoxypropylene, average molecular weight (in amu) 2,000	None	None
Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis[propanol] (4:1)	11111–34–5	When ready for use, the end-use concentration is not to exceed 20 ppm
Oxychloro species (predominantly chlorite, chlorate and chlorine dioxide in an equilibrium mixture) generated either: By directly metering a concentrated chlorine dioxide solution prepared just prior to use, into potable water, or by acidification of an aqueous alkaline solution of oxychloro species (predominately chlorite and chlorate) followed by dilution with potable water	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide'' (50–250 ppm available chlorine dioxide)
Oxychloro species (including chlorine dioxide) generated by acidification of an aqueous solution of sodium chlorite	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide'' (50–250 ppm available chlorine dioxide)
2,4-Pentanediol, 2-methyl-	107–41–5	None
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 315 ppm in the formulated product
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 122 ppm
Phenol, 4-chloro-2-(phenylmethyl)-	120–32–1	When ready for use, the end-use concentration is not to exceed 320 ppm
Phenol, 4-(1,1-dimethylpropyl)-	80–46–6	When ready for use, the end-use concentration is not to exceed 80 ppm
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 34 ppm
Phosphoric acid	7664–38–2	None
Phosphoric acid, monosodium salt	7558–80–7	When ready for use, the end-use concentration is not to exceed 350 ppm
Phosphoric acid, trisodium salt	7601–54–9	When ready for use, the end-use concentration is not to exceed 5916 ppm in the formulated product
Poly(oxy-1,2-ethanediyl), α-[(1,1,3,3-tetramethylbutyl) phenyl]-ω-hydroxy-, produced with one mole of the phenol and 4 to 14 moles ethylene oxide	None	None
Potassium bromide	7758–02–3	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Potassium permanganate	7722–64–7	When ready for use, the end-use concentration is not to exceed 0.7 ppm

Pesticide chemical	CAS No.	Limits
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 297 ppm
2-Propanol (isopropanol)	67–63–0	None
2,6-Pyridinedicarboxylic acid	499–83–2	When ready for use, the end-use concentration is not to exceed 1.2 ppm
Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyl dimethyl, chlorides	8001–54–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{14}) dimethyl ethylbenzyl ammonium chloride, average molecular weight (in amu), 377 to 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{18}) dimethyl ethylbenzyl ammonium chloride average molecular weight (in amu) 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, di-n-Alkyl (C_8–C_{10}) dimethyl ammonium chloride, average molecular weight (in amu), 332 to 361	None	When ready for use, the end-use concentration is not to exceed 240 ppm of active quaternary compound
Sodium-α-alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole	None	None
Sodium bicarbonate	144–55–8	When ready for use, the end-use concentration is not to exceed 120 ppm
Sodium bromide	7647–15–6	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Sodium iodide	7681–82–5	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Sodium mono-and didodecylphenoxy-benzenedisulfonate	None	When ready for use, the end-use concentration is not to exceed 1,920 ppm
Starch	9005–25–8	When ready for use, the end-use concentration is not to exceed 16 ppm
Sulfuric acid	7664–93–9	When ready for use, the end-use concentration is not to exceed 228 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	None
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-	2782–57–2	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, potassium salt	2244–21–5	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, sodium salt	2893–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-trichloro-	87–90–1	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine, N,N′,N″-trichloro-2,4,6-triamino-	7673–09–8	When ready for use, the end-use concentration is not to exceed 200 ppm as total available chlorine
Xylenesulfonic acid, sodium salt	1300–72–7	When ready for use, the end-use concentration is not to exceed 62 ppm

[FR Doc. 03–16034 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

Notices

Federal Register

Vol. 68, No. 122

Wednesday, June 25, 2003

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting on Corps of Engineers' Chancellorsville Battleground Permit

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting on Corps of Engineers' Chancellorsville Battleground permit issue.

SUMMARY: The Advisory Council on Historic Preservation will hold a public meeting in preparation for issuing formal comments, under the National Historic Preservation Act, to the Corps of Engineers regarding its intent to issue a permit for a project on a site associated with the Civil War Battle of Chancellorsville.

DATES: Tuesday, July 1, 2003—beginning at 6:30 p.m.

ADDRESSES: Massaponax High School auditorium, 8201 Jefferson Davis Highway, Fredericksburg, VA 22407. For driving directions *see* the Massaponax High School Web site at *www.spotsylvania.k12.va.us/mhs/default2.asp.*

FOR FURTHER INFORMATION CONTACT: Dr. Tom McCulloch, (202) 606–8505. E-mail *tmcculloch@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent Federal agency, established by the National Historic Preservation Act (NHPA), that promotes the preservation, enhancement, and productive use of our Nation's historic resources, and advises the President and Congress on national historic preservation policy. Among other things, the ACHP issues formal comments to Federal agencies per section 106 of the NHPA. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment on such undertakings. The procedures in 36 CFR part 800 define how Federal agencies meet these statutory responsibilities.

The ACHP will hold a public meeting July 1, 2003, beginning at 6:30 p.m. at Massaponax High School, Fredericksburg, Virginia. The purpose of the meeting is to gather testimony on the U.S. Army Corps of Engineers Norfolk District's evaluation of a permit application pursuant to section 404 of the Clean Water Act for six road crossings over streams associated with a proposed 273-acre residential subdivision. The property, known as the Ashley-Orrock tract, is located on land eligible for listing in the National Register of Historic Places. It occupies parts of the site associated with the Civil War Battle of Chancellorsville. Following the meeting, the ACHP will develop comments, under section 106 of the NHPA, to forward to the Secretary of the Army by July 18, 2003.

Public Participation at the Meeting: Those desiring to attend and make statements are advised to pre-register by e-mail, mail, fax, or phone by 5 p.m. e.d.t. June 27. Please provide name and the organization the speaker officially represents (if any) when registering to speak. E-mail *tmcculloch@achp.gov;* fax information to (202) 606–5072; or phone (202) 606–8505. Mail registrations should be sent to Dr. Tom McCulloch, ACHP, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Note that you are pre-registering for the Corps of Engineers meeting on July 1. Those not registering by June 27 will have the opportunity to sign up to make statements at the meeting, but pre-registrants will have speaking priority.

Written Comments: Written comments also will be accepted at the meeting. Those unable to attend, or who prefer to send written comments at another time, may submit them to the ACHP until 5 p.m. e.d.t. July 9, 2003. Written comments may be sent to the e-mail address, fax number, or office address listed above.

Dated: July 20, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–16062 Filed 6–24–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–055–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection for ongoing monitoring activities: (1) The National Animal Heath Reporting System; (2) the Sentinel Feedlot Monitoring Program; and (3) the Collaboration on Animal Health and Food Safety Epidemiology's Antimicrobial Resistance Monitoring Program.

DATES: We will consider all comments that we receive on or before August 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–055–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–055–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–055–1'' on the subject line.

You may read any comments that we receive on this docket 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.

APHIS documents published in the **Federal Register**, and related information, including the names of

organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the National Animal Health Ongoing Monitoring System, contact Mr. Chris Quatrano, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B, Fort Collins, CO 80526–8117; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Ongoing Monitoring System.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, the Centers for Epidemiology and Animal Health (CEAH), Veterinary Services, Animal and Plant Health Inspection Service (APHIS), plans to initiate as part of the National Animal Health Monitoring System (NAHMS) an information collection to gather data for the following ongoing monitoring systems. Participation in any NAHMS study is voluntary, and all information is confidential.

National Animal Health Reporting System (NAHRS)

CEAH will collect data monthly from State veterinarians on the presence and absence of specific diseases. As a member country of the Office International des Epizooties (OIE), the United States must submit an annual report on the status of List A and B diseases [1] within the United States, and immediately report on any List A disease. The potential benefits to trade include accurate reporting on the health status of the U.S. livestock industry, expansion of livestock industries into new export markets, and preservation of existing markets through increased confidence in quality and disease freedom of U.S. livestock. This data collection is unique in terms of the type, quantity, and frequency; no other entity is collecting and reporting data on the health status of U.S. livestock to OIE.

Sentinel Feedlot Monitoring Program

CEAH will collect data from up to 10 private veterinary practitioners who oversee the health of approximately 20 percent of the cattle-on-feed in the United States. Data are analyzed for health and disease trends, reported monthly to the participants, and summarized periodically for Government reports and publications. This data collection is unique in terms of the type, frequency, and data collected and could become invaluable in the event of an emergency animal disease outbreak, or if an emerging or changing disease condition is detected. The information collected from feedlots will be used by researchers to identify problems and improve upon animal health guidelines, by feedlots to highlight areas for improvement, by consulting veterinarians to modify health programs in feedlots, and by pharmaceutical companies to research and create new products to minimize losses and maintain healthier cattle.

Collaboration on Animal Health and Food Safety Epidemiology (CAHFSE) Antimicrobial Resistance Monitoring Program

This program will monitor antimicrobial resistance among salmonella, enterococcus, campylobacter, and nonpathogenic indicator bacteria, such as non-type species *E. coli*. Both biological samples and operations management data will be collected quarterly from 25 operations (swine, dairy cattle, feedlot cattle, or poultry) nationwide and analyzed to track changes in resistance patterns and to better understand the ecology of antimicrobial resistance. A questionnaire will be used to measure general operations management, herd/flock demographics, and other relevant information that may be related to the ecology of antimicrobial resistance. Biological samples will be analyzed to measure the presence and prevalence of microbials. Information from CAHFSE studies will be disseminated to veterinary consultants/practitioners, industry and producer groups, and academia to monitor antimicrobial resistance and to identify problem areas in health management and feeding practices which contribute to disease transmission.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities for the National Animal Health Ongoing Monitoring System.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.252469 hours per response.

Respondents: State public health officials, private laboratories, private veterinarians, and producers.

Estimated annual number of respondents: 160.

Estimated annual number of responses per respondent: 10.125.

Estimated annual number of responses: 1,620.

Estimated total annual burden on respondents: 2,029 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 19th day of June 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–16040 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–34–P

[1] List A diseases: Transmissible diseases that have the potential for very serious and rapid spread, irrespective of national borders, that are of serious socio-economic or public health consequence and that are of major importance in the international trade of animals and animal products.

List B diseases: Transmissible diseases that are considered to be of socio-economic and/or public health importance within countries and that are significant in the international trade of animals and animal products.

Source: OIE, Paris, France.

DEPARTMENT OF AGRICULTURE

Rural Housing Service (RHS)

Rural Business-Cooperative Service (RBS)

Rural Utilities Service (RUS)

Farm Service Agency (FSA)

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Services, Farm Service Agency, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of 7 CFR, part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

DATES: Comments on this notice must be received on or before August 25, 2003 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Bashir I. Duale, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing and Property Management Division, 1400 Independence Ave., SW., Washington, DC 20250–0523, telephone (202) 720–1645. Electronic mail: *bashir_duale@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR, part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

OMB Number: 0575–0093.

Expiration Date of Approval: August 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 333 of the Consolidated Farm and Rural Development Act (Con Act) (7 U.S.C. 1983) requires the Agencies to ''graduate'' their direct loan borrowers to other credit when they are able to do so. Graduation is required because the Government loans are not to be extended beyond a borrower's need for subsidized rates or Government credit. Borrowers must refinance their direct Government loan when other credit becomes available at reasonable rates and terms. If other credit is not available, the Agencies will continue to review the account for possible graduation at periodic intervals. Also, 7 CFR part 1951, subpart F, requires FSA to provide a financial prospectus to lenders who may be interested in providing credit to FSA direct farm loan borrowers with an FSA guarantee and interest assistance. The information collected to carry out these statutory mandates is financial data such as amount of income, operating expenses, asset values and liabilities. This information collection is then submitted by the Agencies to private creditors.

Estimate of Burden: Public reporting for this collection of information is estimated to average three hours per response.

Respondents: Individuals or households, business or other for profit and farms.

Estimated Number of Respondents: 17,445.

Estimated Number of Responses per Respondent: 3.

Estimated Number of Responses: 34,908.

Estimated Total Annual Burden on Respondents: 70,414 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies estimate of the burden of the proposed collection of information including the validity of the Department of Agriculture methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. 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.

Dated: June 5, 2003.

Thomas C. Dorr,

Undersecretary for Rural Development.

June 19, 2003.

J.B. Penn,

Undersecretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–16022 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–XV–M

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Fremont County, ID; Wildland Urban Interface Project

AGENCY: Forest Service, USDA.

ACTION: Cancellation of the Notice of Intent to prepare an Environmental Impact Statement for the Wildland Urban Interface Project, as published in the **Federal Register** pages 30866 to 30867 on May 8, 2002 (Vol. 67, No. 89).

SUMMARY: The USDA, Forest Service has determined that it will not prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of the Wildland Urban Interface Project in the Island Park area. In response to public comments, the original, landscape-level fuels reduction proposal is being redesigned at a smaller scale.

Dated: June 19, 2003.

Jerry B. Reese,

Caribou-Targhee National Forest Supervisor.

[FR Doc. 03–15986 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on July 14, August 4, and September 8, 2003, at 6:30 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: July 14, August 4, and September 8, 2003.

ADDRESSES: The meetings will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or email *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include informational presentations, status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: June 19, 2003.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 03–15985 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

THE SOUTH GIFFORD PINCHOT NATIONAL FOREST RESOURCE ADVISORY COMMITTEE WILL MEET ON MONDAY, JULY 14, 2003 AT THE WIND RIVER TRAINING CENTER, LOCATED ADJACENT TO THE WIND RIVER WORK CENTER, AT 1262 HEMLOCK ROAD, CARSON, WA 98610. THE MEETING WILL BEGIN AT 8:30 A.M. AND CONTINUE UNTIL 6 P.M. THE PURPOSE OF THE MEETING IS TO REVIEW 42 PROPOSALS FOR TITLE II FUNDING OF FOREST PROJECTS UNDER THE SECURE RURAL SCHOOLS AND COUNTY SELF-DETERMINATION ACT OF 2000. All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 8:45 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: June 19, 2003.

Tom Knappenberger,

Acting Forest Supervisor.

[FR Doc. 03–15987 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Report of Sample Shipments of Chemical Weapon Precursors.

Agency Form Number: none.

OMB Approval Number: 0694–0086.

Type of Request: Renewal of an existing collection.

Burden: 12 hours.

Average Time Per Response: 35 minutes per response.

Number of Respondents: 20 respondents.

Needs and Uses: This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the EAR that permit limited exports of sample shipments without a validated export license. The reports will be reviewed by the Bureau of Industry and Security to monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: June 20, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16042 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Export License Services—Transfer of License Ownership, Requests for a Duplicate License.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection of information.

Burden: 38 hours.

Average Time Per Response: 1 to 15 minutes per response.

Number of Respondents: 200 respondents.

Needs and Uses: In certain circumstances (*i.e.*, company mergers, takeovers, etc.), it is necessary to transfer ownership of licenses to another party, or in instances where records are lost or destroyed, to issue a duplicate license. In the case of a transfer of ownership, the information collected is necessary to ensure that all parties are aware of and agree to the transfer, both of the ownership as well as responsibilities associated with export authorizations. The issuance of a duplicate requires that certain actions be taken if the original license is found. Both are services to exporters provided to the public after export licenses have been issued. Both activities are currently approved under OMB control numbers 0694–0031 and 0694–0051. BIS wishes to combine these activities into one collection authority.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Forms Clearance Officer, (202) 482–0266, Department of Commerce, Room 6025, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 20, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16043 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—Annual Social and Economic Supplement (ASEC) for February, March, and April 2004

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michelle Schwab-Wiland, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 763–3806.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau will conduct the Annual Social and Economic Supplement (ASEC), formally known as the Annual Demographic Survey, in conjunction with the February, March, and April 2004 CPS. The Census Bureau has conducted this supplement annually for over 50 years. The Census Bureau, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

In the ASEC, we collect information on work experience, personal income, noncash benefits, health insurance coverage, and migration. The work experience items in the ASEC provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by people, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ASEC are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use ASEC data to determine the effects of various economic forces, such as inflation, recession, recovery, and so on, and their differential effects on various population groups.

A prime statistic of interest is the classification of people in poverty and how this measurement has changed over time for various groups. Researchers evaluate ASEC income data not only to determine poverty levels but also to determine whether government programs are reaching eligible households.

Congressional passage of the State Children's Health Insurance Program (SCHIP), or Title XXI, led to a mandate from Congress, in 1999, that the sample size for the CPS, and specifically the ASEC, be increased to a level whereby more reliable estimates can be derived for the number of individuals participating in this program at the state level. By administering the ASEC in February, March, and April, rather than only in March as in the past, we have been able to achieve this goal. The total number of respondents has not been upwardly affected by this change.

II. Method of Collection

The ASEC is conducted at the same time as the Basic CPS by personal visits and telephone interviews, using computer-assisted personal interviewing and computer-assisted telephone interviewing.

III. Data

OMB Number: 0607–0354.

Form Number: None. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,000.

Estimated Time Per Response: 25 minutes.

Estimated Total Annual Burden Hours: 32,500.

Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 20, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16044 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Virginia Coastal Resource Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs require findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Virginia Coastal Resource Management Program evaluation site visit will be held August 11–15, 2003. One public meeting will be held during the week. The public meeting will be on Monday, August 11, 2003, at 4:30 p.m., at the Department of Environmental Quality, 629 East Main Street, First Floor Conference Room, Richmond, Virginia.

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: June 19, 2003.

Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–16059 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Oregon Coastal Management Program, Ohio Coastal Management Program and Old Woman Creek National Estuarine Research Reserve in Ohio, Massachusetts Coastal Management Program and Waquoit Bay National Estuarine Research Reserve in Massachusetts, New Hampshire Coastal Management Program, and the Jacques Cousteau/Mullica River National Estuarine Research Reserve in New Jersey.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserve requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Oregon Coastal Management Program evaluation site visit will be held August 4–8, 2003. One public meeting will be held during the week. The public meeting will be on Wednesday, August 6, 2003, at 7 p.m. at Cannon Beach City Hall, Council Chambers, 163 E. Gower Street, Cannon Beach, Oregon 97110.

The Ohio Coastal Management Program and Old Woman Creek National Estuarine Research Reserve evaluations site visit will be held August 11–15, 2003. Two public meetings will be held during the week. The Ohio Office of Coastal Management public meeting will be on Wednesday, August 13, 2003, at 7 p.m., at the Erie County Commissioner Chambers, 2900 Columbus Avenue, Sandusky, Ohio 44870. The Old Creek National Estuarine Research Reserve public meeting will be on Tuesday, August 12, 2003, at 7 p.m., at the Old Woman Creek NERR Visitors Center, 2514 Cleveland Road E., Huron, Ohio.

The Massachusetts Coastal Management Program and Waquoit Bay National Estuarine Research Reserve evaluation site visit will be held September 8–12, 2003. Two public meetings will be held during the week. The Massachusetts Coastal Management Program public meeting will be on Wednesday, September 10, 2003, at 6 p.m., at the Atrium Level, 251 Causeway Street, Boston, Massachusetts 02114. The Waquoit Bay National Estaurine Research Reserve public meeting will be on Thursday, September 11, 2003, at 5:30 p.m., at the Waquoit Bay Reserve

Headquarters, Visitors Center, 149 Waquoit Highway, Waquoit, Massachusetts 02536.

The New Hampshire Coastal Management Program evaluation site visit will be held September 22–24, 2003. One public meeting will be held. The public meeting will be on Tuesday, September 23, 2003, at 7 p.m., Fish and Game Department Region 3 Meeting Room, 225 Main Street, Durham, New Hampshire 03824.

The Jacques Cousteau/Mullica River National Estuarine Research Reserve evaluation site visit will be held September 22–26, 2003. One public meeting will be held during the week. The public meeting will be on Tuesday, September 23, 2003, at 7 p.m., at the Jacques Cousteau Coastal Education Center, 182 Great Bay Boulevard, Tuckerton, New Jersey 08087.

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration

Dated: June 19, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–16060 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032603B]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of California Sea Lions, Pacific Harbor Seals and Northern Elephant Seals Incidental to Research Surveys at San Nicolas Island, Ventura County, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received an application from Glenn R. VanBlaricom for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a small take authorization to Dr. VanBlaricom for 1 year, renewable upon request on an annual basis.

DATES: Comments and information must be received no later than July 25, 2003.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117; or Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 9, 2003, NMFS received a letter from Glenn R. VanBlaricom, Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends over time in black abalone populations at permanent study sites.

Population trend data for black abalone populations are important and needed for several reasons. First, the reintroduction of sea otters to SNI since 1987 raises the possibility of conflict between sea otter conservation and abalone populations because abalones are often significant prey for sea otters. Second, the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, has resulted in dramatically increased rates of abalone mortality at the island. Third, California populations of black abalones have been recently designated as a candidate species for listing pursuant to the Endangered Species Act of 1973 (ESA) (as amended). The concern is that the combined effects of sea otter predation and abalone withering syndrome, following several decades during which black abalones may have been over-harvested in commercial and recreational fisheries, may cause reduction of black abalone populations to the point where risk of extinction increases. Long-term abalone population trend data from SNI is needed to determine if drastic population declines continue, and if extinction risk becomes high.

Project Description

Nine permanent research study areas are located in rocky intertidal habitats on SNI in Ventura County, CA. To date, the applicant has made 89 separate field trips to SNI from September 1979 through September 2002, participating in abalone survey work on 472 different days. Quantitative abalone surveys on SNI began in 1981, at which point permanent research sites were chosen based on the presence of dense patches of abalones in order to monitor changes over time in dense abalone aggregations. Research is conducted by counting black abalones in plots of 3.28 ft (metric) along permanent transect lines in rocky intertidal habitats at each of the nine study sites on the island. Study areas include two to six permanent transects, depending on size of the area and the number and size of abalone patches present. Permanent transect lines are demarcated by stainless steel eyebolts that have been embedded in the rock substrata and secured with marine epoxy compound. Data are collected by temporarily attaching a rope, marked at intervals of 3.28 ft (metric), to the eyebolts with snap-shackles. Transect lengths at the nine study sites range from 23 - 131 ft (metric). Ropes are removed when data collection is finished, and only the permanent eyebolts are left at the sites between visits. Survey work is done by two field biologists working on foot; therefore, monitoring of black abalone populations at SNI can be done only during periods of extreme low tides. The exact date of a visit to any given site is difficult to predict because variation in surf height and sea conditions can influence the safety of field biologists as well as the quality of data collected. In previous years because of optimal availability of low tides, most survey work has been done during the months of January, February, March, July, November, and December. All work is done only during daylight hours because of safety considerations.

Research is expected to extend over a period of 5 years, from 2003 through 2007. Surveys of abalones will be conducted each year during this 5–year period. During each survey year, each of the nine permanent study sites at SNI will be visited twice. Each visit to a given study site lasts for a maximum of 4 hours, after which the site is vacated by researchers.

Variable numbers of sea lions, harbor seals, and elephant seals typically haul out near six of the nine study sites used for abalone research. Breeding activity of these three pinniped species occurs at five of these six sites. Subject marine mammal populations, especially California sea lions and northern elephant seals, at SNI have grown substantially since the beginning of abalone research in 1979, and have occupied an expanded distribution on the island associated with population growth. Thus, sites previously accessible with no risk of marine mammal harassment are now being utilized by marine mammals at levels that will make approach without harassment on future dates very difficult. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land near study sites. Three sites not previously delineated do not have resident pinniped populations, and can be visited without any risk of marine mammal harassment. However, during the most recent abalone surveys, it has become evident that additional research work cannot be conducted at six other sites without the possibility of Level B incidental harassment of pinniped populations hauled out near the study locations; therefore, an IHA is warranted.

Description of Habitat and Marine Mammals Affected by the Activity

A description of SNI and its associated marine mammals can be found in Dr. VanBlaricom's application, which is available upon request (see **ADDRESSES**).

Marine Mammal Impacts

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals, harbor seals, California sea lions, northern fur seals (Callorhinus ursinus), and Steller sea lions (Eumetopias jubatus). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition, a single adult male Guadalupe fur seal was seen at one abalone research site on two occasions during the summer months in the mid–1980's; however, there have been no sightings of this species on the island since then. Descriptions of the biology and distribution of these species and others in the region can be found in Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Barlow *et al.* (1993), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). Please refer to those documents and the application for further information on these species. Other information on harbor seals and California sea lions found in Central California waters can be found in Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/individual__sars.html*.

The applicant requests authorization for incidental takes, by Level B harassment only, of California sea lions, Pacific harbor seals, and northern elephant seals. Individuals from these three species typically haul out near six of the nine study sites, and breeding activity occurs at five of these six sites. Although marine mammals will not be deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out directly upon the permanent abalone study plots. Incidental harassment may result if hauled animals move to increase their distance from persons involved in abalone surveys. In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious

injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups.

However, because of mitigation measures proposed, the applicant expects that only Level B incidental harassment may occur associated with the proposed continuation of black abalone research at SNI and that this research will result in no detectable impact on these marine mammal species or stocks or on their habitats. There is no anticipated impact of the research activity on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Based on past observations made by the applicant at SNI in 2001 and 2002, the maximum number of California sea lions likely to be present in immediate proximity to all nine abalone survey study areas combined during periods of visitation by researchers may total up to 7,515 animals. For Pacific harbor seals the total maximum likely number that could be found at all research sites combined could be 120, and for northern elephant seals the number could be as many as 305. The distribution of pinnipeds hauled out on beaches is not even. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way.

Mitigation

Several mitigation measures to reduce the potential for harassment from population assessment research surveys will be implemented as part of the SNI abalone research activities. Primarily, mitigation of the risk of disturbance to pinnipeds simply requires that researchers are judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone researchers, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be reoccupied by any hauled marine mammals that were disturbed by the presence of abalone researchers.

Both increased risk of injury or mortality possibilities will be mitigated with measures required under the proposed authorization. Disturbances to females with dependent pups (in the cases of California sea lions and Pacific harbor seals) can be mitigated to the greatest extent practicable by avoiding visits to those black abalone study sites with resident pinnipeds during periods of breeding and lactation from February through October. Thus, the months of November, December, and January are preferable for abalone survey work in order to minimize the risk of incidental harassment. During these periods of time, abalone research activities can be confined to black abalone sites where pinniped breeding and post-partum nursing does not occur. This mitigation measure will reduce the possibility of incidental harassment takes and eliminate the potential for serious injury or mortality of dependent California sea lion pups and Pacific harbor seal pups.

Northern elephant seal pups are present at five study sites during winter months, but all age and sex categories of this species can be avoided without harassment. Risks of trampling of elephant seal pups by adults are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Possible takes of northern elephant seal pups will be minimized by avoiding the immediate proximity of hauled seals and any seal pups during approach to the study sites, and during collection of abalone population data while at the study site.

One individual Guadalupe fur seal has been seen at study site 8 on two separate occasions during the summer months in the mid–1980's. No animals of this threatened species have been seen during abalone research work since then. Thus, limitation of research visits to site 8 to the period November through January eliminates the potential for taking of Guadalupe fur seals by harassment. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any disturbance. Although no Guadalupe fur seals are expected to be onshore, possible harassment of Guadalupe fur seals will be avoided by the suspension of research activities as well as the avoidance of any study area in which Guadalupe fur seals are seen and sites occupied by Guadalupe fur seals will be vacated immediately. Therefore, an authorization for the taking of Guadalupe fur seals by harassment is neither required nor requested.

Monitoring

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), US Navy. The US Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, ongoing long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

In general, monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD, allowing transmittal of this information to appropriate agencies and personnel.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the year-long field season. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Endangered Species Act

Although Dr. VanBlaricom has not requested the incidental take of any listed marine mammal species and, preliminarily, NMFS does not expect any listed species to be affected by his research activities, NMFS will continue

to review this action and will decide on whether consultation on the issuance of an IHA under section 101(a)(5)(D) of the MMPA is necessary prior to making a final decision.

National Environmental Policy Act

In accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) and the content and analysis of Dr. VanBlaricom's request for an IHA, that the proposed issuance of this IHA to Dr. VanBlaricom by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, the action of issuing an IHA for these activities meets the definition of a ''Categorical Exclusion'' and is exempted from further environmental review.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of abalone research, as described in this document and in the application for an IHA, should result, at worst, in the temporary modification in behavior by California sea lions, Pacific harbor seals and northern elephant seals. Dr. VanBlaricom believes the effects of abalone research surveys on SNI are expected to be limited to short term and localized changes in behavior involving relatively small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by these species to avoid the presence and nearness of abalone researchers, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to Dr. Glenn R. VanBlaricom for the potential harassment of small numbers of Pacific harbor seals, California sea lions and Northern elephant seals incidental to abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of Pacific harbor seals, California sea lions and northern elephant seals and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: June 18, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–16086 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062003B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a joint public meeting via conference call of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will be via conference call on July 10, 2003, beginning at 10 a.m. EDT.

ADDRESSES: Listening stations will be available at the following locations:

National Marine Fisheries Service, Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Peter Hood at 727–570–5305;

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL,; Contact: Gary Fitzhugh at 850–234–6541, extension 214.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SSC will be convened to review and comment on a proposed Amendment 21 to the Reef Fish Fishery Management Plan (FMP) to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves beyond their June 16, 2004 expiration date.

The Madison/Swanson and Steamboat Lumps marine reserves were implemented on June 19, 2000 with a 4–year sunset provision. The Madison/Swanson site is approximately 115 square nautical miles in size and is located about 40 nautical miles southwest of Apalachicola City, FL. Steamboat Lumps is approximately 104 square nautical miles in size and is located about 95 nautical miles west of Tarpon Springs, FL. Within each area, fishing is prohibited for all species except for highly migratory species, i.e., tunas, marlin, oceanic sharks, sailfishes, and swordfish. These marine reserves were created primarily to protect a portion of the gag spawning aggregations and to protect a portion of the offshore population of male gag. The areas are also suitable habitat and provide protection for many other species, such as scamp, red grouper, warsaw grouper, speckled hind, red snapper, red porgy, and others. If action is not taken to continue the reserves, they will cease to exist after June 16, 2004.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although non-emergency issues not contained in the agenda may come before the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 3, 2003.

Dated: June 20, 2003.

Richard W. Surdi,

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

[FR Doc. 03–16088 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–T–022]

Notice of Change in Publication Format for the Official Gazette of the United States Patent and Trademark Office—Trademarks

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (Office) announces its intention to disseminate all future editions of the *Official Gazette of the United States Patent and Trademark Office—Trademarks* (OG–T) solely in electronic format.

DATES: Beginning on July 15, 2003, the Office will publish all future editions of the OG–T only in electronic format via the Internet at the Office Web site *(http://www.uspto.gov).*

SUPPLEMENTARY INFORMATION:

Background

The Office has published the *Official Gazette of the United States Patent and Trademark Office—Trademarks* in paper format for many years. In March 2002, the Office also commenced publication of the OG–T on its Web site. Currently, the Office provides the text of the OG–T to the Government Printing Office (GPO) for paper publication. Publication of the OG–T is provided for by 15 U.S.C. 1051, 1062, 1063 and 1092. The OG–T is published each week, and provides notice of various matters related to trademark registrations and to applications for trademark registration, including listings of (1) Marks that the Office has approved for registration, (2) registrations that have been cancelled, (3) registrations that have expired, (4) cancelled or expired registrations that have been reinstated, (5) registrations that have been amended or corrected, (6) entities that have received registrations and (7) new certificates that were issued with respect to existing registrations. The OG–T also includes notices that explain existing Office practice, as well as notices that announce proposed or actual changes to Office practice.

Additionally, the OG–T is used to effect service by publication in connection with proceedings at the Trademark Trial and Appeal Board, where notices of proceedings are mailed to a registrant's last known address but are returned by the postal service as undeliverable. The OG–T also includes summaries of final decisions issued by the Trademark Trial and Appeal Board.

New Procedure

In view of the widespread access to computers and the Internet, the Office will only publish the OG–T in electronic format effective July 15, 2003. It is noted that the Office will continue to supply the GPO with an electronic copy of each issue of the OG–T, and that the GPO plans to continue to produce paper copies of the OG–T. GPO also plans to produce CD ROMs that feature searchable versions of the OG–T, if there is sufficient demand.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 306–8910, ext. 137.

Dated: June 19, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–16021 Filed 6–24–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for a Permit Application for the Berths 97–109 Terminal Improvement Project, Also Known as the China Shipping Line (CSL) Phases I, II, and III in the Port of Los Angeles, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps) Los Angeles District in conjunction with the Los Angeles Harbor Department (Port) is examining the feasibility of waterside, terminal and transportation improvements at Berths 97–109 in the Port of Los Angeles. The Corps is considering the Port's application for a Department of the Army permit under Clean Water Act section 404 and River and Harbor Act section 10 to conduct dredge and fill activities and construct two wharves associated with the proposed project. Some of the project elements are completed and others, previously approved by the Corps and the Port, such as the Channel Deepening Project, are presently under construction.

Major project elements to be covered in the Draft EIS/EIR include: wharf construction and landside improvements. The landside developments will include expansion, redevelopment and construction of marine terminal facilities, and transportation infrastructure improvements including construction of bridge structures, and potential realignment of road and railways.

The primary Federal involvement is the discharge of dredge and/or fill materials within waters of the United States, work (*e.g.,* dredging) and structures in or affecting navigable waters of the United States, and potential impacts on the human environment from such activities. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to rendering a final decision on the Port's permit application. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the Preparation of an Environmental Impact Report (EIR). The Corps and the Port have agreed to jointly prepare a Draft EIS/EIR for the improvements at Berth 97–109 (CSL Phases I, II and III) in order to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address both the Federal and the state and local requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS/EIR can be answered by Mr. Joshua Burnam, Corps Project Manager, at (213) 452–3294. Comments shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch. ATTN: File Number 2003–0–1029–JLB PO Box 532711, Los Angeles, CA 90053–2325, and Dr. Ralph Appy, Director of Environmental Management, Port of Los Angeles, 425 S. Palos Verdes St., San Pedro, CA 90731.

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* The proposed project is located in the northwestern portion of the Port of Los Angeles, adjacent to the San Pedro District of the City of Los Angeles, CA. The proposed project involves dredge and fill operations, new wharf construction, coupled with terminal expansion on adjacent areas of existing and newly created land, and

improvement of transportation infrastructure at Berths 97–109.

The project's overall goals are to optimize the container cargo handling efficiency in the Berths 97–109 Terminal, increase its cargo handling capacity, and to improve transportation infrastructure in order to accommodate forecasted and planned increases in the volume of containerized goods shipped through the Port. In order to meet these goals, the following objectives must be met:

- Establish needed container facilities that would maximize the use of existing waterways and integrate into the Port's overall utilization of available shoreline, while maintaining opportunities for the future integration with adjacent terminals;
- Construct sufficient container berthing and infrastructure capacity to accommodate foreseeable increases in containerized cargo volumes entering the Port;
- Create sufficient backland area for optimal container terminal operations including, storage, transport, and on/offloading of container ships in a safe and efficient manner;
- Provide access to rail and truck infrastructure locations in order to minimize surface transportation congestion or delays and promote transport to both local and distant cargo destinations; and
- Provide needed container terminal accessory buildings and structures to support containerized cargo handling requirements.

2. *Proposed Action.* Wharf and backland construction elements include: (1) Construction of the Berth 100 wharf and associated backlands (CSL Phase I), including associated dredging and filling activities, and the placement of piles, rock dike, and construction of concrete wharf deck, (2) Construction of the Berth 102 wharf and development of a marine terminal, including all associated infrastructure and backlands improvements on the Channel Deepening fill, (3) Construction of a 376 linear-foot southern extension of Berth 100 (CSL Phase III), including the placement of rock dike, piles, and construction of concrete wharf deck, and (4) Realignment of rail and roads to create additional backland acreage. Upon completion of all project elements, there will be 2500 linear-feet of continuous concrete wharf deck at Berths 97–109. In addition, project elements that may arise from the public scoping process will also be evaluated in the EIS/EIR.

The proposed improvement project includes the following elements:

Phase I Berth 100–102

- Construction Stage I (2003) [1]

(1) Discharge of fill material in 1.3 acres of waters of the U.S. associated with the construction and operation of a new 1,200-foot wharf (134,000 square feet) at Berth 100.

(2) Dredging of 41,000 cubic yards (cy) of material along the waterfront at Berths 100–102 to match approved ''53 MLLW channel depths, with material to be placed at the Anchorage Road Soil Storage Site.

(3) Construction of 88,000 cy of rock dike, placement of 14,000 cy of fill behind the dike, and placement of 652 concrete piles and 950 pin-piles at Berth 100.

(4) Construction and development of a 75-acre container terminal adjacent to the Berth 100 wharf (35 acres added to the 40 acres that were operating in 2001–2002).

(5) Construction of a bridge from the Berth 100–102 terminal to the Berth 121–131 terminal to facilitate cargo movement between the terminals.

(6) Installation of 4 shore-side gantry cranes (each 243-feet tall) at Berth 100.

(7) Construction of accessory terminal buildings and structures.

Phase II Berth 100–102

- Construction Stage II (2005)

(1) Construction and operation a new 924 linear-foot wharf (114,000 square feet) at Berth 102. Direct impacts to waters of the U.S. associated with the discharge of dredge or fill materials at Berth 102, with the exception of the placement of 560 concrete piles at Berth 102, are associated with the 43-acre landfill in the Southwest Slip that is assessed in the USACE Channel Deepening Project.

(2) Discharge of fill in 1.2 acres of waters of the U.S. associated with the construction and operation of a new 376 linear-foot extension (43,000 square feet) at the southern end of the Phase I wharf.

(3) Construction of 91,000 cy of rock dike and placement of 19,000 cy of fill behind the dike at the Berth 100 extension.

(4) Placement of 560 concrete piles at Berth 102 and placement of 215 concrete piles at the Berth 100 extension.

(5) Development of 35 acres of container terminal backlands on the 43-acre sediment disposal area.

(6) Construction of a second bridge from the Berth 100–102 terminal to the Berth 121–131 terminal to facilitate cargo movement between the terminals.

(7) Installation of 6 shore-side gantry cranes (each 243-feet tall) at Berth 102.

(8) Construction of additional accessory terminal buildings and structures.

Phase III (2010)

Expansion of backland container storage capacity by an additional 24 acres by realigning Front Street and redeveloping the Catalina Terminal area and the former Todd Shipyard parking lot.

3. *Issues.* There are several potential environmental issues that will be addressed in the EIS/EIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Land use and planning impacts;

(b) Geological issues, including dredging and stabilization of fill areas in an area of known seismic activity;

(c) Impacts to water quality;

(d) Potential impacts to marine biological resources and endangered species of birds;

(e) Impacts to air quality;

(f) Impacts to traffic, including marine navigation and ground transportation;

(g) Potential for noise impacts;

(h) Impacts to public utilities and services;

(i) Potential impacts to aesthetic resources, including cranes, light and glare;

(j) Potential impacts on public health and safety;

(k) Potential impacts to recreation;

(l) Cumulative impacts.

4. *Alternatives.* Alternatives initially being considered for the proposed improvement project include the following:

(a) Alternate location(s) for the Terminal Improvements (within the State or within the Ports of Los Angeles/Long Beach).

(b) Non-containerized use of terminal (lumber, autos).

(c) Non-shipping use—park, cruise terminal, commercial development, empty container storage.

(d) No Federal action (Construction of only backlands developments at Phases II and III).

(e) Larger facility (consolidation of joint facilities).

5. *Scoping Process.* The Corps and the Port will jointly conduct separate, simultaneous English and Spanish language public scoping meetings on July 10, 2003 at 6:30 P.M., to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS/EIR. The Spanish language meeting will be held in Wilmington, and the English

[1] The Port anticipates completion of all Construction Phase I elements by August 15th, 2003.

language meeting will be held in San Pedro, specific locations TBD. Parties interested in being added to the Corps' electronic mail notification list for the Port of Los Angeles can register at: *http://www.spl.usace.army.mil/regulatory/register.html*. This list will be used in the future to notify the public about scheduled hearings and availability of future public notices. Participation in the public meeting by Federal, state and local agencies and other interested organizations and persons are encouraged. The Corps and the Port will make location information available in both English and Spanish once the specific locations are determined.

6. *Availability of the Draft EIS/EIR.* The joint lead agencies expect the Draft EIS/EIR to be made available to the public in November 2003. A public hearing will be held during the public comment period for the Draft EIS/EIR.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–16015 Filed 6–24–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Advanced Amphibious Assault Vehicle at Marine Corps Base Camp Pendleton, California

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR parts 1500–1508) announces its decision to replace the amphibious assault vehicle (AAV) with the advanced amphibious assault vehicle (AAAV) at Marine Corps Base (MCB) Camp Pendleton, California, and construct new and modify existing facilities at MCB Camp Pendleton to support the AAAV.

ADDRESSES: A copy of the Environmental Impact Statement (EIS) addressing this decision may be obtained from Commander, Southwest Division, Naval Facilities Engineering Command, Attn: Lisa Seneca, Code 5 CPR.LS, 1220 Pacific Highway, San Diego, California 92132–5190.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Seneca, telephone (619)–532–4744.

SUPPLEMENTARY INFORMATION: The United States Marine Corps is developing the AAAV to replace the AAV as its primary combat vehicle for transporting troops on land, at sea, and from ship to shore. The AAAV is designed to provide increased capabilities compared to the AAV and seamlessly link maneuver from ships and maneuver ashore, thus allowing the Marine Corps and Navy to more effectively implement Operational Maneuver From The Sea.

The proposed action comprises two distinct and related components at MCB Camp Pendleton. The first component is the fielding of the AAAV at MCB Camp Pendleton, CA, which involves replacement of 270 existing active field AAVs with 224 new AAAVs at MCB Camp Pendleton in the First Marine Expeditionary Force and supporting establishment. Of the 224 AAAVs, 214 will be fielded to the Operating Forces as active field vehicles and 10 will be maintained as Depot Maintenance Float Activity life-cycle support vehicles (*i.e.*, not part of the active fleet, but can be used should an active vehicle be rendered inoperative). The 3rd Assault Amphibian Battalion (3rd AA Bn) will receive 161 AAAVs, the Assault Amphibian School Battalion will receive 46 AAAVs, and the Amphibious Vehicle Test Branch (AVTB) will receive 7 AAAVs. The AAV will be gradually replaced by the AAAV. Vehicle replacement is estimated to start in fiscal year 2007 and continue through 2017. Upon full implementation, the proposed action will result in the fielding of 56 fewer active amphibious vehicles at MCB Camp Pendleton, which equates to a 21 percent reduction in the number of vehicles.

Training exercises using the AAAVs will be conducted at MCB Camp Pendleton in existing mechanized maneuver areas, ranges, and other training areas currently used by the AAVs. The mechanized maneuver areas represent areas of concentrated training. In the mechanized maneuver areas, AAAVs will be authorized to maneuver in off-road areas in accordance with applicable laws governing environmental protection. Existing transit routes currently used by AAVs will be used by AAAVs to access mechanized maneuver areas and ranges. The ocean training area will be extended seaward from 3 nm (4 miles (6 km)) up to approximately 25 nm (29 miles (46 km)) from MCB Camp Pendleton beaches to conduct AAAV over-the-horizon training exercises.

The second component of the proposed action is demolition of existing AAV training and maintenance facilities and construction of an Advanced Amphibious Assault Vehicle Consolidated Training, Maintenance, and Headquarters Complex. The 3rd AA Bn maintenance facility will be replaced and AVTB facilities will also be modified and replaced. The existing 3rd AA Bn maintenance building will remain in place, but the existing supply building will be demolished and replaced. The proposed demolition, construction, and modification of facilities will occur in the Del Mar Basin area of MCB Camp Pendleton.

Training activities at the San Clemente Island Range Complex (SCIRC) were considered as part of the proposed action. These training exercises would involve the use of AAAVs in the same areas on land (*e.g.*, the authorized tracked-vehicle maneuver road, tracked-vehicle maneuver areas, and existing transit routes within the Shore Bombardment Area (SHOBA)) and at sea (*e.g.*, SHOBA) currently utilized by the AAVs. Also, AAAVs would conduct over-the-horizon exercises. The Department of the Navy is preparing an EIS/Overseas EIS (OEIS) for the use and management of SCIRC. Any decision regarding the use of SCIRC by the AAAV is being deferred until completion of the SCIRC EIS/OEIS. Accordingly, while AAAV training is proposed at SCIRC, no decision regarding this training is being made in this Record Of Decision. The proposed action and the associated environmental impact analysis presented in the AAAV EIS will be fully incorporated into the SCIRC EIS/OEIS and Biological Assessment. The AAAV will follow all requirements resulting from the SCIRC EIS/OEIS NEPA process, the consultation between Navy and U.S. Fish and Wildlife Service (USFWS) associated with the SCIRC EIS/OEIS NEPA process, and the SCIRC Integrated Natural Resource Management Plan. The SCIRC EIS/OEIS will provide a complete evaluation of SCIRC beach landing operations conducted by a variety of vehicles including the AAAV. In addition, an evaluation of issues related to erosion associated with proposed operations and training will be included in the SCIRC EIS/OEIS. Finally, the SCIRC project section 7 consultation will address the use of maneuver areas (by all vehicles) identified in the AAAV EIS and will formalize the scheduling of SHOBA for environmental management.

The Marine Corps prepared an EIS to evaluate the direct, indirect, and cumulative impacts associated with implementation of the proposed action that is the subject of the present decision. Alternatives evaluated in the EIS included the proposed action and the no-action alternative.

Under the no-action alternative, the fielding of the AAAV and the demolition, modification, and construction of maintenance and training facilities at MCB Camp Pendleton would not occur. AAAV training exercises would not be conducted at SCIRC. The use of the AAV fleet would be continued at MCB Camp Pendleton and SCIRC. However, the continued use of the AAV would not meet the purpose of and need for the proposed action and would not satisfy the need for the newer technology required to meet the mission of the Department of the Navy. It has been determined that the proposed action is the preferred alternative.

Impacts to archeological resources at MCB Camp Pendleton associated with training and operations in the mechanized maneuver areas would be potentially significant. To mitigate this impact, the Marine Corps will complete a cultural resource inventory of the mechanized maneuver areas pursuant to a multi-year condition assessment, site monitoring, and effects treatment plan. The California State Historic Preservation Officer approved this Plan. MCB Camp Pendleton supports 18 species Federally listed as threatened or endangered. Pursuant to the Endangered Species Act, the Marine Corps consulted with USFWS and National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries). These agencies issued a biological opinion (USFWS) and a letter (NOAA Fisheries) in support of AAAV training at Camp Pendleton. The Marine Corps will conduct training in accordance with the provisions of the biological opinion and letter, copies of which are included in the final EIS. Under the Clean Air Act General Conformity rule, the emissions caused by the proposed action would be below *de minimis* levels and would not be regionally significant. Therefore, the Marine Corps has determined that the proposed action will conform with the State Implementation Plan. The Marine Corps has determined and the California Coastal Commission concurred that the proposed action will be consistent with the State Coastal Zone Management Plan.

The draft EIS was provided to the public for a 53-day review period. During this period three comment letters were received from U.S. Environmental Protection Agency, U.S. Department of Interior, and San Diego County Archaeological Society. The U.S. Environmental Protection Agency submitted comments primarily on air and water quality concerns. The U.S. Department of Interior submitted comments primarily on the use of SCIRC and sensitive biological resources potentially affected at MCB Camp Pendleton. These comments were addressed in the final EIS, which was distributed to the public on May 9, 2003, for a 30-day public review period. During this period, one letter was received from the California Department of Toxic Substances Control. Their concerns involved compliance with appropriate laws and regulations governing hazardous substances. The final EIS addresses these issues in detail and appropriate regulations governing hazardous substances will be followed during construction activities. In addition, USFWS verbally requested clarification of how unresolved issues for the AAAV on SCIRC would be resolved. As discussed in the final EIS, AAAV training would be conducted in accordance with protocols developed during preparation of the SCIRC EIS/OEIS.

On behalf of the Department of the Navy, I have decided to implement introduction of the AAAV at MCB Camp Pendleton, including construction of associated support facilities. In making this decision I considered the requirements of the Marine Corps, the potential environmental impacts of this action, social and economic concerns, and other comments received during the EIS process. All practicable means to avoid or minimize environmental harm from implementing introduction of the AAAV at MCB Camp Pendleton have been adopted. After carefully weighing all of these factors I have determined that introduction of the vehicle at MCB Camp Pendleton best meets the requirements of the proposed action.

Dated: June 18, 2003.

Wayne Arny,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 03–16069 Filed 6–24–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–980–007, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Filings

June 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bangor Hydro-Electric Company

[Docket No. ER00–980–007]

Take notice that on June 13, 2003, Bangor-Hydro Electric Company (Bangor Hydro) pursuant to Section 2.11 of the Settlement Agreement filed on November 1, 2000, in Docket No. ER00–980–000, and accepted and modified by the Federal Energy Regulatory Commission on February 26, 2001, submitted an informational filing showing the implementation of Bangor Hydro's open access transmission tariff formula rate for the charges that became effective on June 1, 2003.

Bangor Hydro states that copies of this filing were sent to Bangor Hydro's open access transmission tariff customers, the Commission Trial Staff, the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: July 7, 2003.

2. Idaho Power Company

[Docket No. ER03–953–000]

Take notice that on June 16, 2003, Idaho Power Company (Idaho Power) tendered for filing with the Federal Energy Regulatory Commission seven agreements or amendments to agreements between Idaho Power and PacifiCorp, Bonneville Power Administration, Washington Water Power Company, Utah Associated Municipal Power Systems, Avista Corporation and Sierra Pacific Power Company. Idaho Power seeks effective dates commensurate with the dates of the letter agreements and amendments.

Comment Date: July 7, 2003.

3. Idaho Power Company

[Docket No. ER03–954–000]

Take notice that on June 16, 2003, Idaho Power Company (Idaho Power) tendered for filing with the Federal Energy Regulatory Commission six letter agreements between Idaho Power and Bonneville Power Administration; Montana Power Company, PacificCorp, Pacific Gas and Electric Company and Oregon Trail Electric Consumers Cooperative, Inc. Idaho Power seeks effective dates commensurate with the dates set forth in the letter agreements.

Comment Date: July 7, 2003.

4. NRG Marketing Services LLC

[Docket No. ER03–955–000]

Take notice that on June 16, 2003, NRG Marketing Services LLC filed, under section 205 of the Federal Power Act, an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy

under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment Date: July 7, 2003.

5. Duke Energy Marketing America, LLC

[Docket No. ER03–956–000]

Take notice that on June 16, 2003, Duke Energy Marketing America, LLC (DEMA) submitted for filing a Notice of Succession, pursuant to Sections 35.16 and 131.51 of the Commission's regulations. DEMA states that Duke Energy Power Marketing, LLC (DEPM) changed its name to DEMA, accordingly DEMA is successor to DEPM's market-based rate tariff on file with the Commission and the agreements entered into thereunder.

Comment Date: July 7, 2003.

6. Emmett Power Company

[Docket No. ER03–957–000]

Take notice that on June 13, 2003, Emmett Power Company (EPC) pursuant to Section 35.15(a), 18 CFR 35.15(a), filed with the Federal Energy Regulatory Commission a Notice of Termination of EPC's market-based rate tariffs. EPC requests waiver of the Commission's prior notice requirements so that the termination may be effective June 30, 2003.

Comment Date: July 7, 2003.

7. Sierra Pacific Power Company

[Docket No. ER03–958–003]

Take notice that on June 13, 2003, Sierra Pacific Power Company (Sierra) tendered for filing an executed Interconnection and Operation Agreement between Sierra and Newmont USA Limited d/b/a Newmont Mining Corporation.

Comment Date: July 7, 2003.

8. Exelon Framingham LLC, Exelon Mystic LLC, Exelon New Boston LLC and Exelon West Medway LLC

[Docket No. ER03–959–000]

Take notice that on June 13, 2003, Exelon Framingham LLC, Exelon Mystic LLC, Exelon New Boston LLC and Exelon West Medway LLC (the ''Exelon Companies'') tendered for filing preliminary fixed cost information for their respective generating facilities. This fixed cost information relates to Peaking Unit Safe Harbor Reference Levels proposed by ISO New England Inc. (ISO–NE) for use regarding New England Power Pool Market Rule 1. The Exelon Companies request an effective date of June 1, 2003. The Exelon Companies request a waiver of all applicable Commission regulations to permit such effective date.

The Exelon Companies state that they have provided a copy of this submission to ISO–NE on the date of filing. The Exelon Companies also as a courtesy have mailed a copy of this submission to each affected state regulatory authority.

Comment Date: July 7, 2003.

9. PG Power Sales Three, L.L.C., PG Power Sales One, L.L.C., PG Power Sales Two, L.L.C., PG Power Sales Ten, L.L.C., PG Power Sales Four, L.L.C., PG Power Sales Five, L.L.C., PG Power Sales Six, L.L.C., PG Power Sales Seven, L.L.C., PG Power Sales Eight, L.L.C., PG Power Sales Nine, L.L.C.

[Docket No. ER03–960–000]

Take notice that on June 16, 2003, the above Companies tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, of its market-based electric tariffs filed with the Commission.

The Companies state that the docket numbers and their respective Effective Dates are to be cancelled. The Companies also state that notice of the proposed cancellations, have not been served on any party because the above named Companies have not engaged in any sales of electric power or entered into any power or related contracts with any purchasers.

Comment Date: July 7, 2003.

10. PG Power Sales Twelve, L.L.C. and PG Power Sales Eleven, L.L.C.

[ER03–961–000]

Take notice that on June 16, 2003, the above Companies tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, of its market-based electric tariffs filed with the Commission.

Comment Date: July 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16052 Filed 6–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

June 19, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: June 26, 2003, 9:30 a.m.

Place: Room 3M 2A/B, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters to be Considered: Non-public investigations and inquiries and enforcement related matters.

Contact Person for More Information: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on June 26, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program

offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16133 Filed 6–20–03; 4:50 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0041; FRL–7518–5]

Agency Information Collection Activities; Submission of EPA ICR No. 1072.07 (OMB No. 2060–0081) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Lead-Acid Battery Manufacturing (Renewal). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 25, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@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 September 26, 2002 (67 FR 60672), 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 Number OECA–2003–0041, which is available for public viewing at the Enforcement and Compliance 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 Enforcement and Compliance Docket and Information Center is (202) 566–1514. 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. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to 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, and (2) submit your comments to 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, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or on paper, will be 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 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 *www.epa.gov/edocket.*

Title: NSPS for Lead-Acid Battery Manufacturing (40 CFR part 60, subpart KK) (Renewal) (OMB Control Number 2060–0081, EPA ICR Number 1072.07). This is a request to renew an existing approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart KK, were proposed on January 14, 1980, and promulgated on April 16, 1982. These regulations apply to the following affected facilities in lead-acid battery manufacturing plants with production capacity that is equal to or exceeds 6.5 tons of lead: Grid casting facilities, paste mixing facilities, three-process operation facilities, lead-oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations, commencing construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart KK.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports if using continuous emissions monitoring systems (CEMS). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, 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 62 hours (rounded) 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: Lead-acid battery manufacturing plants/grid casting facilities, paste mixing facilities, three-process operation facilities, lead-oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations.

Estimated Number of Respondents: 52.

Frequency of Response: Initial and semiannual, if using CEMS.

Estimated Total Annual Hour Burden: 4,053 hours (rounded).

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $11,700 which includes no annualized capital/startup costs.

Changes in the Estimates: There is an increase of 3,930 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The net increase in labor burden from the most recently approved ICR is due to the inclusion of monitoring and recordkeeping requirements for sources using scrubbing systems in the burden calculation which had been omitted. We have determined that 25 percent of the sources (*i.e.*, 13 sources) would be required to monitor and record pressure drop across the scrubbing systems every 15 minutes. The inclusion of these rule requirements resulted in a significant net increase in labor hours even when the number of sources significantly decreased (*i.e.*, from 82 to 52) from the most recently approved ICR. The decrease in the number of sources did not affect the labor hours significantly because no periodic reports are required for existing sources. However, the decrease in the number of sources had a net decrease on the operation and maintenance costs associated with continuous monitoring devices when compared to the most recently approved ICR.

Dated: June 13, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–16030 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0192; FRL–7314–9]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The July 16, 2003, Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) meeting to consider and review issues concerned with ensuring data quality for in vitro tests used as alternatives to animal studies for regulatory purposes has been cancelled. A new meeting will be rescheduled within the next several months and will be announced in the **Federal Register**. For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** or see the **Federal Register** of May 30, 2003 (68 FR 32490) (FRL–7311–3).

FOR FURTHER INFORMATION CONTACT: Myrta Christian, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *christian.myrta@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 19, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–16036 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0217; FRL–7314–6]

Imazalil; Availability of Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These documents are the occupational and ecological risk assessments and related documents for imazalil. This notice also starts a 60–day public comment period for the risk assessments. Comments are to be limited to issues directly associated with imazalil and raised by the occupational and ecological risk assessments or other documents placed in the docket. By allowing access and opportunity for comments on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FIFRA are transparent and based on the best available information. The Agency cautions that the risk assessments for imazalil are revised; however, further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket ID number OPP–2003–0217, must be received on or before August 25, 2003.

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: Cecelia Watson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–4329; e-mail address: *watson.cecelia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on imazalil, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially 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–2003–0217. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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–2003–0217. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0217. 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–2003–0217.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm.

119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0217. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the revised occupational and ecological risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility decisions for other pesticides consistent with FIFRA. EPA's dietary risk assessment and tolerance reassessment for imazalil can be found in the Tolerance Reassessment Decision document (TRED) issued for imazalil on July 12, 2002. Therefore, comments should be limited to occupational and ecological risk findings for imazalil. The Agency's occupational and ecological risk assessment and other related documents for imazalil are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for imazalil.

The Agency cautions that the imazalil risk assessment is revised; however, further refinements may be appropriate. Risk assessment documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessments for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the occupational and ecological risk assessments or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessment and associated documents. EPA would also appreciate any comments on risk mitigation options. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by August 25, 2003, using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for imazalil.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 18, 2003.

Richard P. Keigwin, Jr.,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–16035 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0201; FRL–7312–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. 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: The deletions are effective on December 22, 2003, or July 25, 2003 for product registrations 001270–00222, 001812–00355, 002393–00375, 019713–00302, 019713–00359, 040322–00002, and 0042750–00015, unless the Agency receives a written withdrawal request on or before dates given above.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before dates given above.

ADDRESSES: Written withdrawal requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0201 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: James A. Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: *hollins.james@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–2003–0201. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

C. How and to Whom Do I Submit Written Withdrawal Requests?

i. *Electronically*. E-mail your written withdrawal requests to: James A. Hollins at *hollins.james@epa.gov.*, Attention: Docket ID Number OPP–2003–0201.

ii. *Disk or CD ROM*. Written withdrawal requests on disk or CD ROM may be mailed to the address in Unit I.C.2. or delivered by hand or courier to the address in Unit I.C.3., Attention: Docket ID Number OPP–2003–0201. 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 written withdrawal requests to: James A. Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0201.

3. *By hand delivery or courier*. Deliver your written withdrawal requests to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Attention: Docket ID Number OPP–2003–0201. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name/active ingredient, and specific uses deleted.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Active Ingredient	Delete From Label
001270–00222	Zeposector A Spray Insecticide	d-trans-Allethrin; n-Octyl bicycloheptene dicarboximide; Piperonyl butoxide	Food/feed uses
001812–00355	Trilin	Trifluralin	Eggplant, onion uses
002393–00375	Hopkins Poultry and Garden Dust	Carbaryl	Poultry use
019713–00089	Drexel Carbaryl 2L	Carbaryl	Poultry uses
019713–00302	Green Devil Malathion Wettable Powder	Malathion	Apple and pear uses
019713–00359	Best 4 Servis Brand 25% Malathion Wettable Powder	Malathion	Apples, pears, cabbage, broccoli, kale, mustard, turnips and potatoes
040322–00002	B-Free of Flies	Dipropyl isocinchomeronate; Pyrethrins	Cattle use
042750–00015	Albaugh 2,4-D LV4	Acetic Acid	Red potatoes

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product Name	Active Ingredient	Delete From Label
062719–00100	Balan Technical	Benfluralin	Peanuts
068156–00001	Technical Benefin	Benfluralin	Peanuts

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before dates indicated in **DATES** section of this notice to discuss withdrawal of the application for amendment. This 30–day or 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
001270	Zep Manufacturing Company Agent for: Zep Manufacturing Company, 1310 Seaboard Industrial Blvd., NW, Atlanta, GA 30318
001812	Griffin L.L.C., P.O. Box 1847, Valdosta, GA 31603
002393	Haco Inc, P.O. Box 7190, Madison, WI 53707
019713	Drexel Chemical Co, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113
040322	Equine Chemical Co. Inc., P.O. Box 771, Skiatook, OK 74070
042750	Pyxis Regulatory Consulting Agent for: Albaugh Inc., 11324 17th Avenue Court NW, Gig Harbor, WA 98332
062719	Dow AgroSciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268
068156	Dintec AgriChemicals, 9330 Zionsville Rd, Indianapolis, IN 46268

III. What is the Agency 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**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to James A. Hollins using the instructions in Unit I.C. The Agency will consider written withdrawal requests postmarked on or before dates indicated in **DATES** section of this notice.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute products under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in Special Review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 11, 2003.

Arnold E. Layne,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 03–16031 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0166; FRL–7307–8]

Flufenpyr-ethyl; 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 ID number OPP–2003–0166, must be received on or before July 25, 2003.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0166. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0166. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0166. 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–2003–0166.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0166. 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: June 16, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

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

Valent U.S.A. Corporation

PP 0F6164

EPA has received a request from Valent U.S.A. Corporation at 1333 North California Boulevard, Suite 600, Walnut Creek, California 94596–8025 pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for residues of the herbicide chemical flufenpyr-ethyl, ethyl [2-chloro-4-fluoro-5-(5-methyl-6-oxo-4-trifluoromethyl-1,6-dihydropyridazin-1-yl)phenoxy]acetate, in or on the raw agricultural commodities corn, field, grain; soybean, seed; and sugarcane, cane at 0.01 parts per million (ppm) and for the combined residues of the herbicide chemical flufenpyr-ethyl, and its metabolite, *S*-3153-acid-4-*OH*, [2-chloro-4-hydroxy-5-(5-methyl-6-oxo-4-trifluoromethyl-1,6-dihydropyridazin-1-yl)phenoxy]acetic acid, free and conjugated, in or on the raw agricultural commodities corn, field, forage and corn, field, stover at 0.05 ppm. EPA has determined that the request contains data or information consistent with 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 request.

A. Residue Chemistry

Plant and animal metabolism studies with ^{14}C-flufenpyr-ethyl have demonstrated that the residue of concern is adequately understood for the purposes of these tolerances. Practical, validated residue methodology is available to analyze all appropriate matrices for flufenpyr-ethyl residues with an LOQ (limit of quantitation) of 0.01 ppm, and for *S*-3153-acid-4-*OH* metabolite with an LOQ of 0.02 ppm, adequate to enforce all proposed tolerances. The potential for residues of flufenpyr-ethyl has been evaluated in field corn grain, forage, and stover; soybeans; sugarcane; feed items; in appropriate processed products; and animals. These studies are adequate to support appropriate tolerances and dietary risk analyses.

1. *Plant metabolism*. Metabolism of flufenpyr-ethyl radiolabeled with ^{14}C in the phenyl and in the pyridazinyl rings has been studied in corn and soybean plants and in lactating goats, laying hens, and rats. The major metabolic pathway in plants is hydrolysis of the ethyl ester, followed by further metabolism into more polar products by formation of phenolic glyclones. At the proposed pre-harvest intervals total radiocarbon residue in grain samples was very low and adequately represented by parent. However, in plant material and forage samples, a conjugated carboxylic acid phenolic metabolite was present, the aglycone of which, *S*-3153-acid-4-*OH*, was not detected as an animal metabolite. This metabolite was not detected in any raw

agricultural commodity (RAC) grain sample or in sugarcane. The residue of concern in grain and sugarcane is best defined as the parent, flufenpyr-ethyl. However, consistent with plant metabolism studies, finite residues of *S*-3153-acid-4-*OH* were detected in field corn forage and stover, and tolerances are proposed.

2. *Ruminant and poultry metabolism*. Metabolism studies in goats and hens demonstrated that transfer of administered ^{14}C-flufenpyr-ethyl residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 1% of the administered dose. Total radiocarbon residues (parent equivalent) were less than 0.01 ppm in all cases except for approximately 0.15 ppm in kidney and 0.04 ppm in liver. Residues were identified in excreta and all appropriate tissues. In milk (0.002 to 0.008 ppm), kidney, and liver approximately 70 to 90 percent of the residues was identified as the ester hydrolysis product, *S*-3153-acid. In poultry, total ^{14}C residues (parent equivalent) in eggs, muscle and tissues accounted for about 0.1% of the administered dose, and were less than 0.01 ppm in all cases except for approximately 0.02 ppm in liver. More than half of the liver residue was *S*-3153-acid.

3. *Analytical method*. Practical analytical method for detecting and measuring levels of flufenpyr-ethyl and validated in/on all appropriate agricultural commodities and respective processing fractions. Methodology that converts the *S*-3153-acid-4-*O*-glucoside to the corresponding aglycone, *S*-3153-acid-4-*OH*, was developed and validated with an LOQ of 0.02 ppm. The extraction methodologies have been validated using plant samples containing aged radiochemical residue samples from ^{14}C-metabolism studies. The methods have been validated in soybean seed, corn grain, and corn stover at an independent laboratory. The LOQ for flufenpyr-ethyl is 0.01 ppm and the LOQ for *S*-3153-acid-4-*OH* is 0.02 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances. Both flufenpyr-ethyl and *S*-3153-acid-4-*OH* have been evaluated using the FDA multiresidue method protocol.

4. *Magnitude of residues*— i. *Soybean seed*. Twenty-two field trials in soybeans were conducted in 1997 and 1998 in 15 states representing approximately 99% of the soybean acreage in the U.S. (EPA Regions II, IV, and V). Analysis of duplicate samples from these trials showed that at the proposed maximum application rate (24.5 grams active ingredient (a.i.)/acre), or at 5 times the proposed maximum application rate, there were no measurable residues of flufenpyr-ethyl in soybean seed (<0.005 ppm). The analytical LOQ was 0.01 ppm. A processing study in soybean seed treated at the 5-fold application rate demonstrated that flufenpyr-ethyl was undetectable in all processed commodities. All these data support a proposed tolerance of 0.01 ppm for flufenpyr-ethyl in/on soybean seed. No additional tolerances are necessary for processed commodities.

ii. *Sugarcane cane*. Nine field trials in sugarcane were conducted in 1998 in 4 states representing approximately 100% of the sugarcane acreage in the U.S. (EPA Regions II, IV and V). Analysis of duplicate samples from these trials showed that at the proposed seasonal maximum application rate (24.5 grams a.i./acre), or at five times the proposed maximum application rate, there were no measurable residues of flufenpyr-ethyl in sugarcane cane (<0.005 ppm). The analytical LOQ was 0.01 ppm. Because sugarcane is the vegetative portion of the plant, it is possible that residues of the carboxylic acid phenol metabolite (*S*-3153-acid-4-*OH*) might be present. With an LOQ of 0.02 ppm, there was no detected metabolite in any sugarcane sample. Samples of processed commodities from the sugarcane processing studies treated at 5-fold were not analyzed because of the absence of finite residues in any of the cane RAC samples. All these data support a proposed tolerance of 0.01 ppm for flufenpyr-ethyl in/on sugarcane cane. No additional tolerances are necessary for processed commodities.

5. *Field corn*. Twenty-four field trials in field corn were conducted in 1997 (10) and 1998 (14) in 16 states representing approximately 97% of the field corn acreage in the U.S. (EPA Regions I, II, V, VI, VII, VIII, and X). Field plots were treated at the V10 crop stage. Forage was sampled 32 to 65 days after treatment at late R4 to early R5 crop stage. Grain and stover were sampled at dry maturity 58 to 115 days after application.

i. *Field corn grain*. Analysis of duplicate samples of grain from these trials showed that at the proposed maximum application rate (24.5 grams a.i./acre), at half the proposed maximum application rate (12 grams a.i./acre), or from two field plots treated at five times the proposed maximum application rate (121 grams a.i./acre) there were no measurable residues of flufenpyr-ethyl (<0.005ppm). The analytical LOQ was 0.01 ppm. A processing study in field corn grain treated at the five times the normal application rate demonstrated that flufenpyr-ethyl was undetectable in all processed commodities. All these data support a proposed tolerance of 0.01 ppm for flufenpyr-ethyl in/on field corn grain. No additional tolerances are necessary for processed commodities.

ii. *Field corn forage and stover*. Analysis of duplicate samples of forage and stover from these trials showed that at the proposed maximum application rate (24.5 grams a.i./acre), and at half the proposed maximum application rate (12 grams a.i./acre) there were no measurable residues of flufenpyr-ethyl (<0.005 ppm). In forage and stover from plots treated at 5 times the proposed application rate (121 grams a.i./acre) finite residue of flufenpyr-ethyl were detected (0.015 to 0.008 ppm). Forage and stover samples were also analyzed for *S*-3153-acid-4-*OH*. Finite residues of the metabolite were detected in 28 of 52 forage samples, and 11 of 54 stover samples from plots treated at 24.5 grams a.i./acre. Maximum residue values in the two feed commodities were 0.03 ppm. Forage and stover samples from the two plots treated at the 5-fold rate showed maximum residue values of 0.05 ppm. All these data support proposed tolerances of 0.01 ppm for flufenpyr-ethyl and 0.04 ppm *S*-3153-acid-4-*OH* in/on field corn forage and stover.

6. *Secondary residues*. Using proposed tolerances, or for field corn forage and stover the sum of the tolerances for parent and metabolite, to calculate the maximum feed exposure to fed animals, and using the very low potential for residue transfer demonstrated in the lactating goat and laying hen metabolism studies, detectable secondary residues in animal tissues, milk, and eggs are not expected. Therefore, tolerances are not proposed for these commodities.

7. *Rotational crops*. The results of a confined rotational crops accumulation study with ^{14}C-flufenpyr-ethyl indicate that no rotational crop planting restrictions or rotational crop tolerances are required.

B. Toxicological Profile

A full battery of toxicology testing including studies of acute, chronic, oncogenicity, developmental, mutagenicity, and reproductive effects is available for flufenpyr-ethyl. The acute toxicity of flufenpyr-ethyl is low by all routes. Subchronic and chronic toxicity studies exhibit no observable adverse effect level (NOAEL) values from a low of 40 milligrams/kilogram/day (mg/kg/day) (male mouse 18-month oncogenicity) to greater than 1,000 mg/kg/day. Flufenpyr-ethyl is not oncogenic

or mutagenic, and it is not a reproductive or developmental toxicant when tested in standard toxicity studies. Animal metabolism and excretion is rapid; there appear to be no special toxicity concerns for a unique plant metabolite; and there is no evidence for endocrine effects. The kidney and liver appear to be the target organs of flufenpyr-ethyl. EPA has not had the opportunity to review the toxicity studies on flufenpyr-ethyl and has not established toxic endpoints. For chronic oral exposure, Valent has chosen the NOAEL from the second rat reproduction study of 100 ppm (5 mg/kg/day nominal) as the toxic endpoint. There is no study with flufenpyr-ethyl that showed toxicity that could be associated with a single, or acute, oral exposure. Therefore no acute endpoint could be identified, and no acute oral risk analyses are performed.

1. *Acute toxicity*. The acute toxicity of technical grade flufenpyr-ethyl is low by all routes. Flufenpyr-ethyl produces minimal toxicity following acute oral, dermal or inhalation exposures. The technical material is essentially non-irritating to the eye, is not irritating to the skin and does not cause dermal sensitization in guinea pigs. Flufenpyr-ethyl technical will be classified as Toxicity Class IV.

2. *Genotoxicity*. Flufenpyr-ethyl does not present a genetic hazard. Flufenpyr-ethyl technical was negative in the following tests for mutagenicity: Ames assay with and without S9, *in vitro* mammalian cell gene mutation assay using L5178Y/TK$^{+/-}$ mouse lymphoma cells, and the *in vivo* mouse bone marrow micronucleus test.

3. *Reproductive and developmental toxicity*. Developmental toxicity studies have been performed in rats and rabbits, and multigenerational effects on reproduction were tested in rats.

i. *Rats*. In the developmental toxicity study conducted with rats, technical flufenpyr-ethyl was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg/day during gestation days 6 through 19. There were no adverse maternal or fetal effects observed. The NOAEL for both maternal and developmental toxicity was found to be 1,000 mg/kg/day, the highest dose tested.

ii. *Rabbits*. Flufenpyr-ethyl technical was tested in a developmental toxicity study in rabbits at doses of 0, 100, 300 and 1,000 mg/kg/day during gestation days 6 through 28. Maternal mortality occurred at the two highest doses tested but the deaths at 300 ppm were not considered to be the result of systemic toxicity. In surviving animals and their fetuses, there were no adverse effects. Based on these results, the maternal toxicity NOAEL was 300 mg/kg/day and the developmental toxicity NOAEL was 1,000 mg/kg/day.

A second developmental toxicity study was conducted to confirm the maternal NOAEL at dose levels of 0, 100, 200, 300 or 1,000 mg/kg/day during gestation. Again, maternal mortality occurred, but at all dose levels. Detailed examination of these animals showed in the majority of cases the cause of death to be test material aspiration into the lungs. The cause of death for several animals at the high dose could not be determined. Their deaths were therefore attributed to systemic toxicity. There were no other adverse effects in the surviving dams or fetuses. The NOAEL for this study (and overall for both rabbit developmental toxicity studies) were found to be 300 mg/kg/day (maternal) and 1,000 mg/kg/day (developmental).

iii. *Reproduction*. In the rat reproduction study, flufenpyr-ethyl technical was administered in the diet at levels of 0, 200, 2,000, and 20,000 ppm for 2–generations. Parental toxicity was observed at all dose levels, although the effects at the low dose were minimal. Parental toxicity was exhibited by dose-related microscopic changes in the kidney in high dose F_0 animals, in all treated F_1 males, and in high dose F_1 females. There were also 2 high dose F_1 males that died possibly as a result of treatment. Midzonal cytoplasmic vacuolation of the hepatocytes was also observed in the liver of all groups of treated animals in both generations. Based on the results of this study, the NOAEL for parental toxicity was considered to be less than 200 ppm. The NOAEL for reproductive and neonatal toxicity was considered to be 20,000 ppm.

A second 1–generation reproduction study was performed to establish a clear NOAEL for adult kidney lesions using the dose levels of 20, 50 and 100 ppm. The results of the study indicate that the NOAEL for histological changes in the kidneys of F_1 male rats was 100 ppm. No other treatment related findings were noted at any dose level indicating 100 ppm as the NOAEL for treatment and reproductive effects evaluated in the study.

A mechanistic study was also conducted to investigate the reproducibility and reversibility of the kidney lesions observed in the initial 2-generation reproduction study. In the first study, the effects observed at 200 ppm in the F_1 males, basophilic tubules and interstitial inflamation, were minimal but slightly increased in incidence and severity and a slight increase in interstitial fibrosis of the cortex was also observed. In this mechanistic study, using dose levels of 0 and 2,000 ppm, the NOAEL for histological changes in the kidneys of F_0 and F_1 male rats and reproductive effects was 2,000 ppm. The histological changes seen in the kidneys in the original study was not reproducible.

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with flufenpyr-ethyl in the rat, mouse and dog indicate a low level of toxicity.

i. *Rats*. Pure (99.4%) flufenpyr-ethyl was tested in rats at dose levels of 0, 600, 2,000, 6,000, and 20,000 ppm in the diet for 13 weeks. Effects observed included urinary incontinence, increased food and water consumption, slight hematological and blood biochemistry changes, decreased spleen weights, an increase in the incidence and severity of basophilic tubules of the kidneys and slight to mild diffusely distributed vacuolation in the liver. Based on these results, the NOAEL was 2,000 ppm (134.2 mg/kg/day) for the males and 20,000 ppm (1,509.6 mg/kg/day) for the females.

In an additional study, flufenpyr-ethyl technical was tested in rats at dose levels of 0, 1,000, 10,000, and 20,000 ppm in the diet for 13 weeks. Effects observed included urinary incontinence, increased food and water consumption, and mild urinalysis, hematological and blood biochemistry changes. Thymus weights were slightly increased. Diffusely distributed hepatic vacuolation was seen in the high dose males. Based on these findings, the NOAEL was 10,000 ppm (595.2 mg/kg/day) in the males and 20,000 ppm (1,377.5 mg/kg/day) in the females.

ii. *Mice*. In a 4–week study, CD-1 mice were fed pure flufenpyr-ethyl at dose levels of 0, 300, 1,000, 3,000, and 7,000 ppm. Effects were slight anemia, changes in blood biochemistry, increased liver and thymus weights, and enlarged liver. Centrilobular hepatocellular hypertrophy and vacuolation and increases in the severity and incidence of hepatic focal and single cell necrosis were observed. Based on these findings, the NOAEL was 300 ppm (44.9 mg/kg/day) for males and 1,000 (210.5 mg/kg/day) for females. In a 13-week study, flufenpyr-ethyl technical was administered to mice at dose levels of 0, 300, 1,000, 3,000, and 7,000 ppm. Slight anemia and blood biochemistry changes were noted. Liver weights were increased and ovary weights were decreased. Histopathological findings included: Hepatocellular fatty vacuolation. The NOAEL for this study in both sexes was

1,000 ppm (128.4 mg/kg/day for males and 155.7 mg/kg/day for females).

iii. *Dogs*. Flufenpyr-ethyl technical was administered for 13 weeks via capsule to Beagle dogs at levels of 0, 100, 300 or 1,000 mg/kg/day. The effects were very minimal. Only small nonsignificant decreases in body weight and slightly elevated alkaline phosphatase values were noted. In the absence of other effects, the NOAEL in both sexes was determined to be 1,000 mg/kg/day.

iv. *Dermal*. A 21–day dermal toxicity study in rats with flufenpyr-ethyl technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg/day, the highest dose tested.

5. *Chronic toxicity*. Flufenpyr-ethyl technical has been tested in chronic studies with dogs, rats and mice.

i. *Rats*. In a 104–week combined chronic/oncogenicity study in rats, flufenpyr-ethyl technical was administered at dose levels of 0, 100, 1,000, 10,000, or 20,000 ppm in the diet for 24 months. Urinary incontinence, increased food and water consumption, changes in urinalysis, hematological and blood biochemistry changes were observed but the effects were not toxicologically significant. No neoplastic lesions were observed. The NOAEL was found to be 20,000 ppm (777.5 mg/kg/day for males and 1024 mg/kg/day for females).

ii. *Mice*. In a 78–week oncogenicity study with mice, flufenpyr-ethyl technical was administered at dose levels of 0, 350, 3,500, and 7,000 ppm. Male animals exhibited slight anemia. Females had increased liver and kidney weights (week 53 only). Slight to moderate hepatocellular fatty vacuolation and necrosis were observed. There were no increases in incidence of pre-neoplastic or neoplastic lesions. Based on these results, the NOAEL was 350 ppm for both sexes (39.9 mg/kg/day for males and 43.7 mg/kg/day for females).

iii. *Dogs*. In a 52–week chronic study, flufenpyr-ethyl technical was administered by capsule to Beagle dogs at dose levels of 0, 50, 200, and 1,000 mg/kg/day. There were very few observations related to treatment. Slightly elevated alkaline phosphatase values were again observed, but they were not accompanied with any other findings and were thus considered not to be an adverse effect. The NOAEL was determined to be 1,000 mg/kg/day, the highest dose tested.

iv. *Carcinogenicity*. Flufenpyr-ethyl is not a carcinogen. Studies with flufenpyr-ethyl technical have shown that repeated high dose exposures produced minimal signs of toxicity, including slight hematologic, liver and kidney effects, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2–year chronic feeding/oncogenicity study or in a 78-week study on mice. Valent anticipates that the oncogenicity classification of flufenpyr-ethyl will be ''E'' (no evidence of carcinogenicity for humans).

6. *Animal metabolism*. Following oral administration of ^{14}C-phenyl-labeled flufenpyr-ethyl to rats at 50 mg/kg, the majority of the radiocarbon is eliminated from the body within 2 days. Approximately half is excreted in the urine and the balance is excreted in the feces. Tissue residues are very low 7 days after administration (<0.09% of the administered dose). The major metabolite was identified as [2-chloro-4-fluoro-5-(5-methyl-6-oxo-4-trfluoro-methyl-1,6-dihydropyridazin-1-yl)phenoxy]acetic acid (*S*-3153-acid) which accounted for 93.2% of the dose. Two other minor metabolites each accounted for less than 5% of the administered radiocarbon. Flufenpyr-ethyl was detected only in feces (0.5%). The major reaction was cleavage of the ester linkage; minor reactions were hydroxylation of the 5-methyl of pyridazine ring and cleavage of the ether linkage between the phenyl group and the carboxymethyl group.

7. *Metabolite toxicity*. Metabolism studies of flufenpyr-ethyl in rats, goats and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. Because parent and metabolites are not retained in the body, the potential for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the maximum tolerated dose (MTD) and consequent chronic exposure to the internally formed metabolites. One plant metabolite, *S*-3153-acid-4-*OH* was not detected as an animal metabolite. This compound was tested for acute oral toxicity in rats, and for mutagenicity Ames testing with and without mixed function oxidation (S9 mix). The metabolite caused no mortality in rats at 5,000 mg/kg the highest dose tested, and was not mutagenic at up to 5,000 micrograms per plate.

8. *Potential endocrine effects*. No special studies to investigate the potential for estrogenic or other endocrine effects of flufenpyr-ethyl have been performed. However, as summarized above, a large and detailed toxicology data base exists for the compound including studies in all required categories. These studies include acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histology and histopathology of numerous tissues, including endocrine organs, following repeated or long-term exposures. These studies are considered capable of revealing endocrine effects. The results of all of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that flufenpyr-ethyl does not possess estrogenic or endocrine disrupting properties.

C. Aggregate Exposure

1. *Dietary exposure*. A full battery of toxicology testing including studies of acute, chronic, oncogenicity, developmental, mutagenicity, and reproductive effects is available for flufenpyr-ethyl. EPA has not had the opportunity to review the toxicity studies on flufenpyr-ethyl and has not established toxic endpoints of concern for use in risk analyses. For chronic oral exposure, Valent has chosen the NOAEL from the second rat reproduction study of 100 ppm (5 mg/kg/day nominal) as the toxic endpoint. There is no study with flufenpyr-ethyl that showed toxicity that could be associated with a single, or acute, oral exposure. Therefore no acute endpoint could be identified, and no acute oral risk analyses are performed. The chronic RfD using the standard 100-fold uncertainty factor is 0.05 mg/kg/day, and because there is no evidence of enhances susceptibility of infants and children, the FQPA extra 10-fold uncertainty factor is removed. Thus, the Population Adjusted Dose for chronic oral exposure (cPAD) used in these risk assessments is 0.05 mg/kg/day.

i. *Food—a. Acute dietary exposure*. There is no acute oral toxic endpoint identified, and so no acute exposure and risk analysis was performed.

b. Chronic dietary exposures to flufenpyr-ethyl residues were calculated for the U.S. population and 25 population subgroups. This Tier I analysis includes residue contribution from the field corn, soybean and sugarcane uses and assumes tolerance-level residues and 100% of the crops treated. The results from several representative subgroups are listed below. For all population subgroups, chronic dietary exposure was below 0.2% of the cPAD. Generally, the Agency has no cause for concern if total chronic exposure to residues contributed by published and proposed tolerances is less than 100% of the cPAD.

TIER I—CALCULATED CHRONIC DIETARY EXPOSURES TO THE TOTAL U.S. POPULATION AND SELECTED SUB-POPULATIONS TO FLUFENPYR-ETHYL RESIDUES IN FOOD (cPAD = 0.05 MG/KG/DAY)

Population Subgroup	Exposure (mg/kg/day)	Percent of cPAD
Total U.S. population	0.000025	0.05
Males (13 - 19 years)	0.000032	0.06
Females (13 + (nursing))	0.000019	0.04
Females (13 + (pregnant/not nursing))	0.000021	0.04
Children (7 - 12 years)	0.000043	0.09
Children (1 - 6 years)	0.000056	0.11
All infants (< 1 year)	0.000067	0.13
Non-nursing infants	0.000082	0.16
Nursing infants	0.000017	0.03

ii. *Drinking water*. Since flufenpyr-ethyl is applied outdoors to growing agricultural crops and can be applied by aircraft, the potential exists for the parent or its metabolites to reach ground water or surface water that may be used for drinking water. Because of the physical and environmental fate properties of flufenpyr-ethyl, it is unlikely that flufenpyr-ethyl or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for flufenpyr-ethyl were estimated using Generic Expected Enviornmental Concentration (GENEEC 1.2.). The 56–day average GENEEC concentration was 0.027 ppb. Using standard assumptions about body weight and water consumption, the maximum chronic exposure from this drinking water would be 0.000000763 and 0.00000267 mg/kg/day for adults and children, respectively; 0.0053 percent of the cPAD of 0.05 mg/kg/day for children. The contribution of drinking water to chronic dietary exposures is much smaller than that from food, and adds negligible risk.

2. *Non-dietary exposure*. Flufenpyr-ethyl is proposed only for agricultural uses and no homeowner, turf, or industrial uses. Thus, no non-dietary risk assessment is needed.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are other pesticidal compounds that are structurally related to flufenpyr-ethyl and may have similar effects on animals. In consideration of potential cumulative effects of flufenpyr-ethyl and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by flufenpyr-ethyl would be cumulative with those of other chemical compounds. Thus, only the potential risks of flufenpyr-ethyl have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of flufenpyr-ethyl consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6) and other subsequent EPA publications pursuant to the Food Quality Protection Act of 1996 (FQPA).

E. Safety Determination

The FQPA introduced a new standard of safety, a reasonable certainty of no harm. To make this determination, at this time the Agency should consider only the incremental risk of flufenpyr-ethyl in its exposure assessment. Since the potential chronic and acute exposures to flufenpyr-ethyl are small (<100% of cPAD and aPAD) the provisions of the FQPA will not be violated.

1. *U.S. population*—i. *Acute risk*. There is no acute oral toxic endpoint available, so no risk analysis was performed.

ii. *Chronic risk*. Using the dietary exposure assessment procedures described above for flufenpyr-ethyl, calculated chronic dietary exposure resulting from residue exposure from proposed uses of flufenpyr-ethyl is minimal. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is 0.064 to 0.042% of the cPAD. Addition of the small but worse case potential exposure from drinking water (calculated above) increases exposure by only 0.000000763 mg/kg/day (0.0053% of cPAD) and the maximum occupancy of the cPAD from 0.064% to 0.066%. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the cPAD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population and many non-child/infant subgroups from aggregate, chronic exposure to flufenpyr-ethyl residues.

2. *Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of flufenpyr-ethyl, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to 10-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

In assessing the potential for additional sensitivity of infants and children to residues of flufenpyr-ethyl, EPA considers the completeness of the human health effects data, particularly those studies that evaluate toxicity to reproduction and to fetal and developing young experimental animals. These studies include developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to prenatal and postnatal effects from exposure to the pesticide, information on the reproductive capability of both male and female mating animals and data on systemic toxicity.

3. *Developmental toxicity*. Flufenpyr-ethyl is not a developmental toxicant in either rats or rabbits. In the developmental toxicity study conducted with rats, the NOAEL for both maternal and developmental toxicity was found to be 1,000 mg/kg/day, the highest dose tested.

Flufenpyr technical was tested in two developmental toxicity studies in rabbits because of unexpected maternal mortality. In the first study maternal mortality occurred at the two highest doses tested. In surviving animals and their fetuses, there were no adverse effects. Based on these results, the maternal toxicity NOAEL was 100 mg/kg/day and the developmental toxicity NOAEL was 1,000 mg/kg/day. In the second study maternal mortality again occurred, but at all dose levels. Detailed examination of most these animals showed the cause of death to be test material aspiration into the lungs. There were no other adverse effects in the surviving dams or fetuses. The NOAEL for this study and the overall NOAEL for rabbits was found to be 300 mg/kg/day (maternal) and 1,000 mg/kg/day (developmental).

4. *Reproduction*. In the rat reproduction study, flufenpyr-ethyl technical was administered for 2–generations. Parental toxicity (kidney and liver effects) was observed at all dose levels, although the effects at the low dose were minimal. There were no effects at any dose on any reproductive parameter. Based on the results of this study, the NOAEL for parental toxicity was considered to be less than 200 ppm. The NOAEL for reproductive and neonatal toxicity was considered to be 20,000 ppm.

A second 1–generation reproduction study was performed to establish a clear NOAEL for adult kidney lesions using the dose levels of 20, 50 and 100 ppm. The results of the study indicate that the NOAEL for histological changes in the kidneys for F_1 male rats was 100 ppm. No other treatment-related findings were noted at any dose level indicating 100 ppm as the NOAEL for treatment and reproductive effects evaluated in the study.

A mechanistic study was also conducted to investigate the reproducibility and reversibility of the kidney lesions observed in the initial 2–generation reproduction study. In the first study, the effects observed at 200 ppm in the F_1 males, basophilic tubules and interstitial inflamation, were minimal but slightly increased in incidence and severity and a slight increase in interstitial fibrosis of the cortex was also observed. In this mechanistic study, using dose levels of 0 and 2,000 ppm, the NOAEL for histological changes in the kidneys of F_0 and F_1 male rats and reproductive effects was 2,000 ppm. The histological changes seen in the kidneys in the original study was not reproducible.

The toxicological data base for evaluating prenatal and postnatal toxicity for flufenpyr-ethyl is complete with respect to current data requirements. Valent concludes that there is no evidence that fetal, or developing young experimental animals are any more susceptible to the effects of flufenpyr-ethyl than adult animals. Therefore there is no need for an extra FQPA uncertainly factor to be further protective of infants and children.

5. *Acute exposure and risk*. There is no acute oral toxic endpoint available, so no risk analysis was performed.

6. *Chronic exposure and risk*. Using the conservative exposure assumptions described above, the percentage of the cPAD that will be utilized by dietary (food only) exposure to residues of flufenpyr-ethyl ranges from 0.16% for non-nursing infants, to 0.03% for nursing infants. Adding the worse case potential incremental exposure to infants and children from flufenpyr-ethyl in drinking water (0.00000267 mg/kg/day) increases the aggregate, chronic dietary exposure by 0.0053% The addition of the exposure attributable to drinking water increases the occupancy of the cPAD for Non-Nursing Infants from 0.164 to 0.169 percent. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic exposure to flufenpyr-ethyl residues.

7. *Safety determination summary*. Aggregate chronic dietary exposure to various sub-populations of children and adults demonstrate acceptable risk. Chronic dietary exposures to flufenpyr-ethyl occupy considerably less than 100% of the cPAD. Acute dietary risk to children from flufenpyr-ethyl should not be of concern. Further, flufenpyr-ethyl has only agricultural uses and no other uses, such as indoor pest control, homeowner or turf, that could lead to unique, enhanced exposures to vulnerable sub-groups of the population. It can be concluded that there is a reasonable certainty that no harm will result to the U.S. population or to any sub-group of the U.S. population, including infants and children, from aggregate chronic exposures to flufenpyr-ethyl residues resulting from proposed uses. There is no evidence that acute oral exposures to flufenpyr ethyl causes appreciable toxicity, and no exposure and risk analyses are appropriate.

F. International Tolerances

There are no existing U.S. tolerances or Codex Maximum Residue Limits for flufenpyr-ethyl.

[FR Doc. 03–16033 Filed 6–24–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0031; FRL–7315–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 26, 2003 to June 2, 2003, consists of the PMNs and

TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0031 and the specific PMN number or TME number, must be received on or before July 25, 2003.

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: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0031. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0031 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0031 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 26, 2003 to June 2, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 13 PREMANUFACTURE NOTICES RECEIVED FROM: 05/26/03 TO 06/02/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0576	05/28/03	08/25/03	Eastman Chemical Company	(S) Tackifier resin for hot melt adhesive	(G) Styrenated hydrocarbon resin, hydrogenated

I. 13 PREMANUFACTURE NOTICES RECEIVED FROM: 05/26/03 TO 06/02/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0577	05/28/03	08/25/03	CBI	(S) Resin for high pressure laminate	(S) Guanidine, cyano-, polymer with formaldehyde, 6-methyl-1,3,5-triazine-2,4-diamine and 1,3,5-triazine-2,4,6-triamine
P–03–0578	05/30/03	08/27/03	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer
P–03–0579	05/28/03	08/25/03	Lubrizol Metalworking Additives	(S) Lubricant, metalworking fluid	(G) Polyolefin ester, amine salt
P–03–0580	06/02/03	08/30/03	CBI	(G) A crosslinking agent for water-borne coatings, inks and adhesives	(G) Multifunctional polycarbodiimide
P–03–0581	06/02/03	08/30/03	CBI	(G) Structural material	(G) Telechelic polyacrylate
P–03–0582	06/02/03	08/30/03	CBI	(G) Paint additive	(G) Polyurethane
P–03–0583	06/02/03	08/30/03	CBI	(G) Paint additive	(G) Polyurethane
P–03–0584	06/02/03	08/30/03	PPG Industries, Inc.	(G) Component of photoresist coating	(G) Urethane acrylate
P–03–0585	06/02/03	08/30/03	Sensient Colors Inc.	(S) Dye intermediate	(S) 1,3-benzenedisulfonic acid, 4-[bis[4-(diethylamino)phenyl]methyl]-6-hydroxy-
P–03–0586	06/02/03	08/30/03	Sensient Colors Inc.	(S) Food dye in europe	(S) Ethanaminium, n-[4-[[4-(diethylamino)phenyl] (5-hydroxy-2,4-disulfophenyl)methylene] -2,5-cyclohexadien-1-ylidene]-ethyl-, inner salt, monosodium salt
P–03–0587	06/02/03	08/30/03	Purac America, Inc.	(S) Polymer production	(S) Propanoic acid, 2-hydroxy-,(2r)-
P–03–0592	05/28/03	08/25/03	Sanyo Corporation of America	(S) additives for paint (malled and fatered finish agents)	(S) 2-propenoic acid, 2-methyl-, 1,2-ethanediyl ester, polymer with butyl 2-methyl-2-propenoate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICE RECEIVED FROM: 05/26/03 TO 06/02/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–03–0004	06/02/03	07/16/03	PPG Industries, Inc. Coatings	(G) Component pf photoresist coating	(G) Urethane acrylate

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 9 NOTICES OF COMMENCEMENT FROM: 05/23/03 TO 06/02/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–99–0599	05/28/03	05/14/03	(S) Benzoic acid, 2-hydroxy-4-methyl, ethyl ester
P–01–0178	05/29/03	05/14/03	(S) 3-butenoic acid, 2-hydroxy-3-methyl-, ethylester
P–01–0667	05/30/03	04/14/03	(G) Maleic acid copolymer salt
P–01–0668	05/30/03	04/14/03	(G) Maleic acid co-polymer salt
P–02–0999	05/29/03	05/14/03	(G) Silane coated barium sulfate
P–03–0042	05/28/03	05/12/03	(G) Alkylamides, ethoxylated
P–03–0165	05/28/03	05/12/03	(G) Salt of a modified polyacrylamide
P–03–0284	05/28/03	05/17/03	(S) 1h-benz[e]indole, 1,1,2-trimethyl-, hydrochloride
P–03–0290	05/28/03	05/14/03	(G) Propanoic acid, substituted ester

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 17, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–16032 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

RIN 3052–AC13

Loan Policies and Operations; Loan Syndication Transactions

AGENCY: Farm Credit Administration.

ACTION: Notice; extension of comment period.

SUMMARY: The Farm Credit Administration (FCA, we, or us) is extending the comment period on our notice concerning loan syndication transactions by Farm Credit System (System) institutions so all interested parties have more time to respond to our questions.

DATES: Please send your comments to the FCA by August 19, 2003.

ADDRESSES: We encourage you to send comments by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of FCA's Web site, *www.fca.gov.* You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On January 17, 2003, we published a notice in the **Federal Register** seeking public comment on the treatment of loan syndication transactions by Farm Credit System (System) banks and associations. The comment period expired on February 18, 2003. *See* 68 FR 2540, January 17, 2003. We reopened the comment period until April 21, 2003, to provide interested parties an additional 60 days to comment on this issue. *See* 68 FR 8764, February 25, 2003. Subsequently, we extended the comment until June 20, 2003, again to provide additional opportunities for interested parties to provide comment. *See* 68 FR 19538, April 21, 2003.

A member of the public has now requested us to extend the comment period for an additional 60 days, until August 19, 2003. In response to this request, we are extending the comment period until August 19, 2003, so all interested parties have more time to respond to our questions. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on our notice.

Dated: June 19, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–16061 Filed 6–24–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–2033]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the next meeting date and agenda of the Consumer Advisory Committee (hereinafter ''the Committee''), whose purpose is to make recommendations to the Federal Communications Commission (''FCC'' or ''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday, July 11, 2003, from 9 a.m. to 4 p.m.

ADDRESSES: The Committee will meet at the Commission's headquarters building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, 202–418–2809 (voice) or 202–418–0179 (TTY). E-mail: *cac@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 03–2033, released June 19, 2003. The Commission announced the next meeting date and meeting agenda of its Consumer Advisory Committee.

Purpose and Functions

The purpose of the committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

Meeting Date and Agenda

The next meeting of the Committee will take place on Friday, July 11, 2003, 9 a.m. to 4 p.m., at the Commission's headquarters building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554.

At its July 11, 2003 meeting, the Committee will consider issues relating to broadband, the Telephone Consumer Protection Act, E9–1–1 service, wireless number portability, telecommunications relay services, and outreach to underserved populations. The Committee will also receive a briefing regarding consumer protection and enforcement activities, and may also consider other consumer issues within the jurisdiction of the Commission.

Availability of Copies and Electronic Accessibility

A copy of the June 19, 2003 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at *www.fcc.gov/cgb/cac.* The Committee meetings will be broadcast on the Internet in Real Audio/Real Video format with captioning at *www.fcc.gov/cgb/cac.* Meetings will be sign language interpreted, and real-time transcription and assistive listening devices will also be available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout materials will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's Web site at *www.fcc.gov/cgb/cac.*

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of

interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–15983 Filed 6–24–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2610]

Petitions for Reconsideration of Action in Rulemaking Proceedings

June 16, 2003.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by July 10, 2003. See § 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 the Redesignation of the 17.7–19.7 GHz Frequency Band Blanket Licensing of Satellite Earth Stations in the 17.2–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use (IB Docket No. 98–172, RM–9005, RM–9118)

Number of Petitions Filed: 1

Subject: In the Matter of 1998 Biennial Regulatory Review—Private Land Radio Services (WT Docket No. 98–182)

Number of Petitions Filed: 1

Marlene H. Dortch,

Secretary.

[FR Doc. 03–15984 Filed 6–24–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below listed agreement provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the proposed agreement modification. This action prevents the agreement modification from becoming effective as originally scheduled.

Agreement No.: 011692–003.

Title: Indamex Agreement.

Parties: Contship Containerlines, a division of CP Ships (UK) Limited, CMA CGM, S.A., The Shipping Corporation of India Ltd.

By Order of the Federal Maritime Commission.

Dated: June 20, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16094 Filed 6–24–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011155–003.

Title: Wallenius Wilhelmsen Lines/NYK Space Charter and Cooperative Working Agreement.

Parties:

Wallenius Wilhelmsen Lines AS (''WWL''),

Nippon Yusen Kaisha (''NYK'').

Synopsis: The amendment changes the name of the agreement and expands the geographic scope of the agreement to include the trade from the U.S. to Europe. It replaces the language in Articles 5, 6, and 7 with entirely new language. It also adds language to Article 9 allowing a party to withdraw on six months' notice. New Articles 10 and 11 deal with arbitration and force majeure. The changes reflect a new space charter arrangement between the parties and are intended to replace the cooperation between them under the WALLNYK Joint Service and related agreements, which the parties plan to terminate around August 1, 2003.

Agreement No.: 011290–030.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties:

APL Co. Pte. Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; Bermuda Container Line; Canada Maritime Agencies Ltd. (associate member); CMA CGM, S.A.; Compania Latino Americana de Navegacion SA (associate member); Contship Containerlines, a division of CP Ships (UK) Limited; Crowley Maritime Corporation; CSX Lines, LLC (associate member); Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Südamerikanische Dampfschifffahrtgesellschaft KG (Columbus Line); Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Italia di Navigazione, S.p.A.; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited LLC; Marine Transport Lines, Inc. (associate member); Maruba S.C.A.; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk Sealand; National Shipping Co. of Saudi Arabia; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd, Ltd.; P&O Nedlloyd B.V.; Safmarine Container Lines; TMM Lines Limited; Tropical Shipping & Construction Co., Ltd.; Wallenius Wilhelmsen Lines AS; Zim Israel Navigation Company, Ltd.

Synopsis: The amendment deletes Senator Lines GmbH as a party to the agreement adds Alianca Navegacao e Logistica Ltda.; China Shipping Container Lines Co., Ltd.; Hanjin Shipping Co., Ltd.; Seaboard Marine Ltd.; and Yang Ming Marine Transport Corp. as parties to the agreement. These membership changes became effective on filing.

Agreement No.: 011798–001.

Title: Atlantic Space Charter Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH

Nippon Yusen Kaisha

Orient Overseas Container Line Limited, Orient Overseas Container Line Inc., and Orient Overseas Container Line (UK) Limited (as one Party)

P&O Nedlloyd Limited/P&O Nedlloyd BV (as one Party)

Lykes Lines Limited LLC,

TMM Lines Limited, LLC (Acting as a single Party under the Grand Alliance-Americana Atlantic

Agreement, FMC Agreement No. 011705) and
COSCO Container Lines Company, Limited,
Kawasaki Kisen Kaisha, Ltd.,
YangMing (UK) Ltd.,
Hanjin Container Lines, Ltd. (Acting individually).

Synopsis: The agreement is amended to: (1) Delete Hanjin Container Lines, Ltd. as a party; (2) change the name of Orient Overseas Container Line (UK) Limited to Dart-ML Limited; and (3) reduce the total space allocation to the charterers to reflect the withdrawal of Hanjin and the reduction of K-Line's allocation.

Agreement No.: 011846–001.

Title: CCNI/Maruba Cooperative Working Agreement.

Parties:
Compañia Chilena de Navegación Interoceánica S.A., Maruba S.C.A.

Synopsis: The amendment deletes Article 5(e) from the agreement, which authorizes the parties to discuss and agree on rates and surcharges.

Agreement No.: 201145.

Title: Oakland/Evergreen Marine Terminal Agreement.

Parties:
City of Oakland Board of Port Commissioners, Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The agreement is a non-exclusive preference assignment of improved land and water area and four cranes at the port of Oakland. The agreement runs through June 2, 2013.

By Order of the Federal Maritime Commission.

Dated: June 20, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16095 Filed 6–24–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–06]

Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Peter Karouta Kennedy—Possible Violations of Sections 8(a), 10(b)(2)(A), and 19 of the Shipping Act of 1984, as well as the Commission's Regulations as 46 CFR pts. 515 and 520; Order of Investigation and Hearing

June 20, 2003.

Notice is given that on June 17, 2003, the Federal Maritime Commission served an Order of Investigation and Hearing on Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Mr. Peter Karouta Kennedy. Monarch Shipping Lines, Inc. (''Monarch''), incorporated in the State of New York, holds itself out as a vessel-operating common carrier (''VOCC'') and Mr. Peter Karouta Kennedy is its owner and President. American Lines LLC (''American Lines''), a Connecticut corporation, holds itself out as a VOCC and is owned and operated by Mr. Peter Karouta Kennedy. Mozart Forwarding, Inc. (''Mozart''), a New York corporation, is a licensed ocean freight forwarder (FMC License No. 3486–R) and is also owned and operated by Mr. Peter Karouta Kennedy.

It appears that, from at least May 4, 2000, through August 15, 2000, Monarch knowingly and willfully operated as a common carrier without publishing a tariff. It appears that Monarch provided transportation services as a non-vessel-operating common carrier (''NVOCC'') with respect to shipments from May 4, 2000, through April 11, 2002, without obtaining an ocean transportation intermediary (''OTI'') license and without providing proof of financial responsibility in the form of a surety bond. It also appears, that from November 23, 2000, through December 23, 2000, Monarch processed at least 105 shipments for one of its customers and assessed and collected rates that were not the same as those set forth in its published tariff. American Lines appears to have operated as a common carrier without publishing a tariff from January 1, 2002, through June 13, 2002. Subsequent to the publication of its tariff, it appears that American Lines provided transportation services as an NVOCC without obtaining an OTI license and without providing proof of financial responsibility in the form of a surety bond. It appears that American Lines also failed to follow the rates and charges in its published tariff. Furthermore, it appears that Mozart and Peter Karouta Kennedy knowingly and willfully misled the Commission by failing to disclose required information on Mozart's pending FMC–18 application for an NVOCC license.

This proceeding therefore seeks to determine: (1) Whether Monarch and American Lines violated section 8(a) of the Shipping Act of 1984 (''1984 Act'') and 46 CFR pt. 520 by operating, for a certain period of time, without a tariff; (2) whether Monarch, American Lines, and Peter Karouta Kennedy violated section 10(b)(2) of the 1984 Act by providing service at rates and charges other than those specified in Monarch's and American Lines' tariffs; (3) whether Monarch, American Lines, and Peter Karouta Kennedy violated section 19 of the 1984 Act and the Commission's regulations at 46 CFR pt. 515 by operating as NVOCCs without obtaining licenses and without providing proof of financial responsibility in the form of surety bonds; (4) whether Mozart and Peter Karouta Kennedy violated the Commission's regulation at 46 CFR pt. 515 by their failure to disclose required information of the FMC–18 application; (5) whether, in the event violations of sections 8(a) 10(b)(2)(A), and 19 of the 1984 Act and/or 46 CFR pts. 515 and 520 are found, civil penalties should be and assessed and, if so, the amount; (6) whether, in the event violations of section 10(b)(2)(A) of the 1984 Act are found, the tariffs of Monarch and American Lines should be suspended; (7) whether the OTI license of Mozart should be suspended or revoked pursuant to section 19 of the 1984 Act, and (8) whether, in the event violations are found, and appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's Home page at: *http//www.fmc.gov* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16098 Filed 6–24–03; 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
16571N	Arrow Worldwide Logistics, Inc., 137 Eucalyptus Drive, El Segundo, CA 90245	March 12, 2003.
6064N	Container Management, Inc., 3250 N.W. North River Drive, Miami, FL 33142	May 18, 2003.
17572F	Impex of Doral Logistics, Inc., 8436 N.W. 72nd Street, Miami, FL 33166	October 16, 2002.
16574F	International Forwarders Inc., 501–C Industrial Street, Lake Worth, FL 33461	May 5, 2003.

Dated: June 20, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–16097 Filed 6–24–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Pallets In Motion, 929 W. Spruce Avenue, Inglewood, CA 90301, Officer: Kelvin R. Coze, Director (Qualifying Individual).

Tramer Air Transport, Inc., 175–01 Rockaway Blvd., Suite 328, Jamaica, NY 11434, Officer: Dominic Kwan, President (Qualifying Individual).

California Export Line, Inc., 373 Broadway, Suite D–5, New York, NY 10013, Officers: Yasser Mohamed Mahfouz, President (Qualifying Individual), Bindu Koil Parampil, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Love Box (Phil.) Ltd. Co., 32756 Hanford Ct., Union City, CA 94587, Officer: Antonio D. Tongson, CEO (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Ship Your Stuff, LLC dba Ship Your Stuff.Com, 2015 Malcolm Avenue, Los Angeles, CA 90049, Officers: Christopher Wilson, COO (Qualifying Individual), Pierre Sordain, CEO.

Dated: June 20, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16096 Filed 6–24–03; 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 July 18, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Clinton Financial Services, MHC, Clinton, Massachusetts, and its subsidiary, Wachusett Financial Services, Inc., Clinton, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Clinton Savings Bank, Clinton, Massachusetts.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Marco Community Bancorp, Inc., Marco Island, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Marco Community Bank, Marco Island, Florida.

C. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Canon Bank Corporation, Canon City, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of Canon National Bank, Canon City, Colorado.

Board of Governors of the Federal Reserve System, June 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16050 Filed 6–24–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[60Day–03–81]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: ATSDR Market Survey of Priority Populations (0923–0030)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 amendments, the Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances in the environment.

As the agency responsible for determining the nature and extent of health problems at Superfund sites, ATSDR staff conducts public health assessments, health consultations, and health studies that serve as the basis for intervention strategies. ATSDR staff develops and disseminates to the public scientific and technical reports on the health effects of hazardous substances. Additionally, ATSDR staff collaborates with other governmental agencies, external partners, and organizations to create and implement health services, and educational and preventive programs.

ATSDR has designed a quantitative research tool to evaluate the effectiveness of its agency-wide services, products, and programs. The agency received initial OMB approval for this project in 2000 and began to utilize the tool to collect data from priority populations. ATSDR is requesting a three-year extension of the approval on this project. ATSDR plans to analyze responses received to date and make adjustments to the current survey tool. Additionally, ATSDR plans to expand the reach of the survey to more individuals in priority populations.

With this project, ATSDR staff is seeking information from its priority populations to determine their awareness of, access to and utilization of ATSDR products, programs, and services. ATSDR staff also plans to evaluate whether priority populations derived health benefits from its interventions.

ATSDR's priority populations include health department officials, members of national health and environmental organizations, health care providers, and members of communities within two miles of National Priority List sites. Samples of individuals in these priority populations will be selected and asked to answer a questionnaire on two separate occasions within the three-year project. The questionnaire will be designed to use a Web-based electronic form and Computer Assisted Telephone Interviews (CATI) so that respondent burden can be reduced.

ATSDR will use the data from this study to evaluate and improve the effectiveness of its health promotion and intervention activities in communities. This will translate into more effective organizational decisions on resource utilization, improved performance, and assessment of the future direction of the agency. There are no costs to respondents.

Respondents	No. of respondents per year	No. of responses per respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Individuals in priority populations	7,500	1	20/60	2,500

Dated: June 17, 2003.

Nancy E. Cheal,

Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–15988 Filed 6–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Aggregate Report.

OMB No.: 0970–0150.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit annual aggregate data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Annual aggregate reports include data elements represented in the ACF–800. Aggregate data is used to determine the scope, type, and methods of child care delivery. This provides the Administration for Children and Families (ACF) with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–800.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	40	2,240

Estimated Total Annual Burden Hours: 2,240.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, SW., Washington, DC 20503. Attn: Desk Officer for ACF.E-mail address: *lauren_;wittenberg@omb.eop.gov.*

Dated: June 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–16046 Filed 6–24–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Migrant and Seasonal Head Start Research Design Development Project.

OMB No.: New Collection.

Description: The Head Start Bureau (Migrant Head Start Branch) within the Administration for Children and Families of the U.S. Department of Health and Human Services is requesting comments on a pilot study that will be used to guide the development of appropriate and effective research designs for studying Migrant and Seasonal Head Start (MSHS) programs. This study is being conducted under contract with Westat, Inc. (with Aguirre International as its subcontractor) (#282–98–0015, Task Order #44) to collect information that will guide the development of appropriate and effective research designs that could be used in an eventual national evaluation of MSHS. Such an evaluation would serve to bridge the evaluation gap between MSHS and other Head Start programs. MSHS has been excluded from previous congressionally-mandated evaluations of Head Start due in large part to the difficulty of applying standard research designs to MSHS' highly transient population.

The Migrant and Seasonal Head Start Research Design Development Project Pilot Study will involve visits to six sites (three in the Fall and three in the Spring) where data collections will take place. Data collections will include interviews with program administrators, coordinators, teachers, parents, and other child care providers. There will also be some use of observational measures of classrooms and brief direct (one-to-one) assessments or parent and teacher reports for children ages 0–5, the full age spectrum served by the MSHS program. Data collection will take place during two time periods: Fall (October–November) 2003 and Summer (June–August) 2004.

The pilot study data will not be used to evaluate program performance or child outcomes, but to test the feasibility of different evaluation designs that could be used during an eventual national evaluation of MSHS programs. A primary issue to be tested is whether, or under what conditions, it is possible to assess program factors and child and family outcomes in different program sites among children and families who routinely migrate through multiple sites in a relatively unpredictable manner throughout a given growing season. Another issue to test is whether standardized measures of children's competencies, and parent/teacher reports of these competencies, are appropriate, for this largely Spanish-speaking sample, many of whom speak unique non-Spanish/non-English languages, and whose cultural backgrounds are also unique. This pilot study is also designed to determine how children and families can be tracked across these multiple sites, and determine the kinds and intensities of MSHS program services they obtain, including such aspects as children's curriculum and care, parent services, and coordination with community resources and services.

Respondents: Parents, Children, MSHS Teachers, MSHS Program Staff.

Annual Burden Estimates: Estimates Response Burden for Respondents to the Migrant and Seasonal Head Start Research Design Development Project.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
MSHS Parent Interview I	150	2	.25	75.0
MSHS Parent Interview II	75	2	1.5	225.0
MSHS Teacher Interview I	6	1	.50	3.0
MSHS Teacher Interview II	6	19	.50	57.0
MSHS Child Assessment (3–5 years)	45	2	.50	45.0
MSHS Child Assessment (0–3 years)	12	2	.33	7.92
MSHS Program Staff Interviews	24	1	.50	12.0
Estimated Total Annual Burden Hours				424.92

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov.* All requests should

be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Dated: June 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–16047 Filed 6–24–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed projects:

Title: Order to Withhold Income for Child Support Notice of an Order to Withhold Income for Child Support.

OMB No.: 0970–0154.

Description: Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, section 234 requires the Federal Office of Child Support Enforcement (OCSE) to develop a standardized form to collect child support payments from an obligor's employer.

The form, which promotes standardization, is used for IV–D and non-IV–D cases that require income withholding. We are revising the form to make it more universal for tribal governments and other users. This 2-page form provides a detailed legal description of established child support orders, support amounts, and remittance information that an employer needs to withhold payments from an obligor who owes child support.

Respondents: 54.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per responses	Total burden hours
Order and Notice of an Order to Withhold Income for Child Support	54	216,100	.084	980,230

Estimated Total Annual Burden Hours: 980,230.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@act.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Dated: June 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–16048 Filed 6–24–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CCB–2003–01]

Early Learning Opportunities Act Discretionary Grants

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of the availability of competitive grants to Local Councils.

SUMMARY: The purpose of this program announcement is to announce the availability of Fiscal Year 2003 Discretionary Funds, authorized by Congress under the Consolidated Appropriations Act of 2003 (Pub. L. 108–7), for Early Learning Opportunities Act (ELOA) (Pub. L. 106–554) competitive discretionary grants to Local Councils.

The Catalog of Federal Domestic Assistance Number is 93.577.

DATES: The closing date for submission of applications is August 6, 2003. Mailed applications postmarked after the closing date will be classified as late and therefore will not be eligible for competition.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are sent on or before the deadline date and received by ACF in time for the independent review. Applications must be sent to: Educational Services, Inc., Attn: ACYF Operations Center, Child Care Bureau Program Announcement No. ACYF–PA–CCB–2003–01, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, Telephone: 1–800–351–2293.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks will not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m., EDT, Monday through Friday (excluding Federal holidays) at the above address. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media, regardless of date or time of submission and receipt. Therefore, applications transmitted to ACF electronically will not be accepted.

Late Applications: Applications that do not meet the criteria stated above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Notice of Intent to Submit an Application: If you intend to submit an application, you are strongly encouraged to notify the Child Care Bureau by fax at (202) 690–5600 at least three weeks prior to the submission deadline date. Your fax should be sent to Ms. Taryonka Reid and include the following information: The number and title of this announcement; the name and address of the Local Council; and your contact person's name, phone number, fax number, and e-mail address. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for future program announcements.

FOR FURTHER INFORMATION CONTACT: A copy of this Program Announcement and the necessary forms can be obtained by calling 1–800–351–2293. Copies of this Program Announcement can also be downloaded approximately 10 days after publication in the **Federal Register** from the Child Care Bureau's Web site at *http://www.acf.hhs.gov/programs/ccb/.* There are standard forms that must be submitted along with your application. All of the necessary standard forms to accompany your application can be downloaded from the following Web site: *http://www.acf.hhs.gov/programs/ofs/forms.htm#apps.*

To ask questions about the application process, you are encouraged to call the ACYF Operations Center at 1–800–351–2293. If you have programmatic questions about the ELOA discretionary grant program, you may contact Carol L. Gage, Federal Project Officer at (202) 690–6243 or *cgage@acf.hhs.gov* or Sylvia Johnson, Grants Officer at (202) 401–4524 or *syjohnson@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The contents of the ACF Uniform Discretionary Grant Application for this program as well as preparation instructions are contained in this program announcement.

This Supplementary Information section contains all the instructions needed to apply for a grant under this announcement.

The Supplementary Information section consists of six parts and four appendices. Part I includes background information on the Child Care Bureau, general information about the Early Learning Opportunities Act program, a description of the goals and priorities related to this announcement, and relevant definitions. Part II contains key program information and requirements such as project duration, allowable activities, funding requirements, and eligibility. Part III contains the general instructions for preparing the Uniform Project Description. Part IV contains the evaluation criteria upon which applications will be reviewed and evaluated. Part V describes the application and selection process. Part VI provides the required contents of the application as well as instructions for submission. *Appendix A* is a sample Letter of Designation of the Local Council by an Entity of Local Government. *Appendix B* is a sample Letter of Designation of the Local Council and Identification of the Fiscal Agency by an Entity of Local Government. *Appendix C* is a sample format for providing information about the composition of the Local Council. *Appendix D* is a list of the Fiscal Year 2001 ELOA grantees and the geographic areas they serve. *Appendix E* is a list of the Fiscal Year 2002 ELOA grantees and the geographic areas they serve.

The contents of the Supplementary Information section are outlined below:

Table of Contents

Part I. General Information
A. The Child Care Bureau
B. The Early Learning Opportunities Act
C. Early Learning Opportunities Act Grants—Goals and Priorities
D. Definitions
Part II. Program Information and Requirements
A. Purposes
B. Citations
C. Number of Awards
D. Project Duration and Budget Period
E. Funding Levels and Reservations
F. Allowable Early Learning Activities
G. Non-Federal Share of Project Costs
H. Other Financial Requirements
I. Eligibility
J. Protections
Part III. General Instructions for Preparing the Uniform Project Description
Part I—The Project Description Overview
A. Purpose
B. General Instructions
Part II—General Instructions for Preparing a Full Project Description
A. Project Summary/Abstract
B. Objectives and Need for Assistance
C. Results and Benefits Expected
D. Approach
E. Evaluation
F. Geographic Location
G. Additional Information
H. Budget and Budget Justification
Part IV. Evaluation Criteria
Criterion 1. Objectives and Need for Assistance
Criterion 2. Approach
Criterion 3. Results and Benefits Expected
Criterion 4. Evaluation
Criterion 5. Additional Information
Criterion 6. Budget and Budget Justification
Part V. Application and Selection Process
A. Assistance to Prospective Grantees
B. Application Requirements
C. Paperwork Reduction Act of 1995
D. Notification under Executive Order 12372
E. Availability of Forms and Other Materials
F. Application Consideration and Selection
Part VI. Submission Instructions
A. Contents of Application
B. Submission of Application
Appendix A. Sample 1—Letter of Designation of the Local Council by an Entity of Local Government
Appendix B. Sample 2—Letter of Designation of the Local Council and Identification of the Fiscal Agent by an Entity of Local Government
Appendix C. Sample Format for Providing Information on the Composition of the Local Council
Appendix D. List of Fiscal Year 2001 ELOA Grantees and Geographic Service Areas
Appendix E. List of Fiscal Year 2002 ELOA Grantees and Geographic Service Areas

Part I. General Information

A. The Child Care Bureau

The Child Care Bureau was established in 1995 to provide leadership to efforts to enhance the quality, affordability, and supply of child care. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes

funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care. With related State and Federal funding, CCDF provides more than $11 billion a year to States, Territories, and Tribes to help low-income working families access child care services.

The Bureau works closely with ACF Regional Offices, States, Territories, and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services, and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. The Early Learning Opportunities Act

The Early Learning Opportunities Act (ELOA) was passed by Congress to award grants to States to enable them to increase, support, expand and better coordinate early learning opportunities for children and their families through local community organizations. The purposes of the Act are to: (1) Increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that they enter school ready to learn; (2) support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children; (3) remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States; (4) increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and (5) facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

The Act provides that if the amount appropriated for this program in any fiscal year is less than $150 million, the Department of Health and Human Services (DHHS) shall award grants on a competitive basis directly to Local Councils. DHHS is administering the program under this special provision in Fiscal Year (FY) 2003.

C. Early Learning Opportunities Act Grants—Goals and Priorities

In FY 2003, grants will be awarded, on a competitive basis, directly to those Local Councils that can best assess their community needs and create a plan to facilitate the development of community-based systems and collaborative service delivery models.

ELOA grants will be available to Local Councils that have been so designated by a local government entity, Indian Tribe, Regional Corporation, or Native Hawaiian entity. Local Councils will be required to submit the results of a current needs and resources assessment, documenting the needs of the young children and families in their locality, as well as a local plan that addresses the most significant needs. To receive an ELOA grant, the plan must include activities for ''Enhancing Early Childhood Literacy,'' and two or more of the other allowable ELOA activities specified in Part II, F. The implementation plan must describe the outcome measures and an evaluation plan for each proposed activity.

In developing local plans and applications under this announcement, ACF encourages Local Councils to incorporate strategies to promote the involvement of faith-based providers.

D. Definitions

Administrative Costs—means costs related to the overall management of the program, which do not directly relate to the provision of program services. These costs can be in both the personnel and non-personnel budget categories and include, but are not limited to: Salaries of managerial and administrative staff, indirect costs, and other costs associated with administrative functions such as accounting, payroll services, or auditing. **Note:** Not more than three percent of the total Federal share received by the Local Council through this announcement shall be used to pay for the ''administrative costs'' of the Local Council, including administrative costs of any sub-grantees and third parties in carrying out activities funded under the grant.

Budget Period—for the purposes of this announcement, budget period means the 17-month period of time for which ELOA funds are made available to a particular grantee (*i.e.*, beginning on September 30, 2003, and ending on February 28, 2005).

Caregiver—means an individual, including a relative, neighbor, or family friend, who regularly or frequently provides care, with or without compensation, for a child for whom the individual is not the parent.

Child Care Provider—means a provider of non-residential child care services (including center-based, family-based, and in-home child care services) for compensation who or that is legally operating under State law, and in compliance with applicable State and local requirements for the provision of child care services.

Early Learning—when used with respect to a program or activity, means learning designed to facilitate the development of cognitive, language, motor, and social-emotional skills for, and to promote learning readiness in, young children (see definition of young child).

Early Learning Program—means a program of services or activities that helps parents, caregivers, and child care providers to incorporate early learning into the daily lives of young children; or a program that directly provides early learning to young children.

Indian Tribe—has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Local Council—means a Local Council established or designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity to serve as applicant under this announcement serving one or more localities.

Local Government—means a county, municipality, city, town, township, borough, parish, select board, council of local governments (whether or not incorporated as a non-profit corporation under State law), intra-state district, a general purpose unit of local government, and any other interstate or regional unit of local government. ''Local Government'' does not mean any of the 50 States, or any agency or instrumentality of a State exclusive of local governments.

Locality—means a city, county, borough, township, or area served by another general purpose unit of local government, an Indian Tribe, a Regional Corporation, or a Native Hawaiian entity.

Native Hawaiian Entity—means a private non-profit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

Non-Federal Share—means that portion of project costs not borne by the Federal government. Under ELOA, the minimum required Non-Federal Share is 15 percent of the total cost of the approved project.

Parent—means a biological parent, an adoptive parent, a stepparent, a foster parent, or a legal guardian of, or a person standing in loco parentis to a child.

Program Income—means gross income earned by the grantee or subgrantee that is directly generated by a grant supported activity, or earned only as a result of the award. 45 CFR parts 74 and 92 include similar types of earned revenue, which qualify as program income. These include but are not limited to income from fees for services performed and the use of rental property.

Project Period—for the purposes of this announcement, project period means the 17-month period starting on September 30, 2003, and ending on February 28, 2005.

Real Property—means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Regional Corporation—means a Native Alaska Regional Corporation; an entity listed in section 419(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)).

Training—means instruction in early learning that—(a) is required for certification under State and local laws, regulations, and policies; (b) is required to receive a nationally or State recognized credential or its equivalent; (c) is received in a postsecondary education program focused on early learning or early childhood development in which the individual is enrolled; or (d) is provided, certified, or sponsored by an organization that is recognized for its expertise in promoting early learning or early childhood development.

Young Child—for purposes of this program, means any child from birth to the age of mandatory school attendance in the State where the child resides.

Part II. Program Information and Requirements

A. Purposes

The purposes of the Early Learning Opportunities Act (ELOA) are—

- To increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that they enter school ready to learn;
- To support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children;
- To remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States;
- To increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and
- To facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

B. Citations

1. *Sponsorship:* Grants being awarded under this announcement are sponsored by the Child Care Bureau (the Bureau) of the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (DHHS). The Bureau will manage the grants.

2. *Funding Authority:* Funding is provided by ACF under the Consolidated Appropriations Act of 2003 (Pub. L. 108–7 and Pub. L. 106–554, the Early Learning Opportunities Act.)

C. Number of Awards

The Bureau estimates that up to 50 grants will be awarded in FY 2003, subject to the availability of funds and the results of the review process.

D. Project Duration and Budget Period

The project period for all ELOA grants will be 17 months and will begin on September 30, 2003, and end on February 28, 2005.

E. Funding Levels and Reservations

Individual awards will be between $250,000 and $1,000,000 depending on the size of the population to be served as well as geographic area to be served and the reasonableness of the budget in relationship to the services to be provided. While this will vary depending on the scope of the applications submitted, awards are expected to average $700,000. Applicants that request Federal funds in excess of $1,000,000 will be considered ''non-responsive'' and will be returned to the applicant without further review.

The Act (section 809) provides that the Secretary shall reserve a portion of each year's total ELOA appropriation for Indian Tribes, Regional Corporations, and Native Hawaiian entities. ACF anticipates competitively awarding funds to at least one Local Council designated by an Indian Tribe and one Local Council designated by an Alaska Native Regional Corporation or Native Hawaiian entity, subject to receipt of applications meeting the requirements of the Act as reflected in this announcement. ACF is setting aside no less than one percent of the FY 2003 ELOA appropriation for these purposes.

F. Allowable Early Learning Activities

In general, Local Councils may use ELOA funds to pay for developing, operating, or enhancing voluntary early learning programs that are likely to produce sustained gains in early learning. The President has identified the enhancement of early childhood literacy as a priority for this administration. Therefore, for FY 2003 grants, the Child Care Bureau will only consider for funding those Local Councils that include in their applications activities for ''Enhancing Early Childhood Literacy'' (see Item 1. below), AND two or more of the other allowable activities listed below (*i.e.,* Items 2 through 8).

The Project Summary/Abstract must contain statements that clearly identify which of the following allowable early learning activities are included in the project.

1. Enhancing early childhood literacy AND two or more of the following allowable activities:
2. Helping parents, caregivers, child care providers, and educators increase their capacity to facilitate the development of cognitive, language comprehension, expressive language, social emotional, and motor skills, and promote learning readiness;
3. Promoting effective parenting;
4. Developing linkages among early learning programs within a community and between early learning programs and health care services for young children;
5. Increasing access to early learning opportunities for young children with special needs including developmental delays, by facilitating coordination with other programs serving such young children;
6. Increasing access to existing early learning programs by expanding the days or times that the young children are served, by expanding the number of

young children served, or by improving the affordability of the programs for low-income families;

7. Improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives for early learning providers;

8. Removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times.

G. Non-Federal Share of Project Costs

Grantees must provide at least 15 percent of the total approved project cost. The total approved project cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $500,000 in Federal funds must include a match of at least $88,235 (15 percent of the total approved project cost). To compute the non-Federal share divide the Federal share by .85 and subtract the Federal share from that amount. For example: $500,000 ÷ .85 = $588,235 − $500,000 = $88,235. The total approved project cost in this example is $588,235.

The non-Federal share may be contributed in cash or in-kind, fairly evaluated, including facilities, equipment, or services, which may be provided from State or local public sources, or through donations from private entities. For the purposes of this paragraph, the term ''facilities'' includes the use of facilities, but, the term ''equipment'' means donated equipment and not the use of equipment. Applicants are strongly discouraged from providing non-Federal share resources in excess of the required 15 percent. Applicants that provide more than the required 15 percent will *not* receive any additional credit or points under the evaluation criteria.

Applicants are encouraged to provide Letter(s) of Commitment from the State, local public and private organizations/agencies, and any other source that will be contributing toward the Applicant's non-Federal share of project costs. The Letter(s) of Commitment should state the amount to be contributed and the form of the contribution (*i.e.*, cash or in-kind). **Note:** Letter(s) of Commitment are not to be confused with Letter(s) of Support or with the Letter of Designation by an Entity of Local Government.

Applicants that are awarded an ELOA grant (Grantees) will be held accountable on the grant award for commitments of the non-Federal share even if the approved amount exceeds the required minimum of 15 percent. Failure, by the Grantee to provide the amount of the non-Federal share specified on the grant award when the grant is closed-out, may result in a proportionate reduction of the Federal share or other disallowance action (*e.g.*, Grantee returns Federal funds). Grantees should be aware that they may not be allowed post-award to reduce any excess amount of the non-Federal share if they contribute more than the minimum 15 percent required.

H. Other Financial Requirements

1. Amounts received shall be used to supplement and not supplant other Federal, State, and local public funds expended to promote early learning. No funds provided shall be used to carry-out an activity funded under another provision of law providing for Federal child care or early learning programs, unless an expansion of such activity is identified in the local needs assessment and performance goals.

2. Not more than three percent of the total Federal share received by the Local Council through this announcement shall be used to pay for the administrative costs (as defined in Part I, D.) of the Local Council, including the administrative costs of any of its sub-grantees and third parties, in carrying-out activities funded under the grant.

3. Local Councils receiving assistance under the ELOA shall ensure that programs, services, and activities assisted under this program, which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay.

4. Applications proposing to use ELOA funds for construction purposes or for the purchase of real property will not be considered for funding.

5. Any non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled, *or* any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Private, non-profit organizations are encouraged to submit with their applications the optional survey located under ''Grant Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

6. For-profit organizations submitting an application must provide a letter stating that their fees/profits will be waived if awarded an ELOA grant.

I. Eligibility

1. Letter(s) of Designation (Designation of Local Council by Local Government Entity)

An eligible applicant for an FY 2003 ELOA grant must be a Local Council designated, in writing, by a local government entity(ies) (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) as a ''Local Council'' to serve one or more localities for the purpose of applying for an ELOA discretionary grant. The applicant must include a ''Letter of Designation'' in its application from an appropriate local government entity(ies) specifically designating it as the Local Council for the purpose of applying for an ELOA grant.

Because the structure and authority of local governments differ greatly across the nation, and even within a State, it is the responsibility of the applicant to determine and identify the appropriate entity(ies) of local government to designate them as the Local Council for an ELOA grant application. Examples of local government entities include but are not limited to: Mayors, city managers, city councils, county boards of supervisors, county boards of commissioners, county administrators, Tribal Councils, boards of municipal officers, etc. The local government entity(ies) making the designation must also clearly explain in its letter the source/nature of its authority to make such a designation on behalf of the locality(ies) it represents.

Applicants serving multiple localities (*e.g.,* cities, townships, boroughs, counties) are strongly encouraged to obtain a Letter of Designation from an appropriate entity of local government from each of the localities to be served. Appendices A and B are sample Letters of Designation that meet this eligibility requirement. Applicants are strongly encouraged to tilize the language and format provided in the sample Letters of Designation. Appendix A is a sample Letter of Designation of the Local Council when the services of a Fiscal Agent will not be used, while Appendix B is a sample Letter of Designation for a Local Council that will use a Fiscal Agent.

''Letter(s) of Support'' for the Local Council from a local government entity(ies) will not be considered as

meeting the eligibility requirements for a Letter of Designation. Applications that do not include a Letter of Designation from an appropriate entity of local government will be disqualified and not competed for an award.

Applicants from Indian Tribes and Regional Corporations must include a tribal resolution from the governing body of the Tribe(s) or Regional Corporation(s), designating a Local Council for the purpose of the ELOA. In general, the Tribal Council would not be considered a Local Council for ELOA unless its membership also meets the composition requirements described below (see Composition of Local Council).

''State'' governments do not meet the definition of ''Local Government'' (see Part I (D)). Therefore, a Letter(s) of Designation from an entity(ies) of State Government will not be considered as meeting these eligibility requirements.

Local Councils that were formed prior to the date of enactment of the ELOA and that meet the membership requirements below will be considered eligible for the purposes of applying for an ELOA grant if a Letter(s) of Designation from an appropriate entity(ies) of local government is submitted as part of the application. In localities where a Local Council does not exist, one may be formed and designated for the purposes of applying for an ELOA grant.

In addition, Local Councils may be faith-based organizations or may include faith-based organizations in their membership, provided that the eligibility criteria outlined below are met.

2. Composition of a Local Council

To receive an award, the membership of the Local Council must be composed of:

a. Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement;

b. Parents;

c. Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and

d. Other key community leaders.

3. Local Council as Applicant and Designation of Fiscal Agent

The Local Council must be the applicant under this announcement (*See* Application for Federal Assistance, SF–424, Items 5–7) and, if selected to receive a grant, will be responsible for ensuring compliance with all activities and terms of the grant.

A Local Council may enter into an agreement with an entity that is affected by, or concerned with early learning issues, and that has a demonstrated capacity for administering grants, to serve as Fiscal Agent for the administration of grant funds received by the Local Council under this program. This may include faith-based organizations or a State.

When a Local Council will use a Fiscal Agent, the Fiscal Agent's name and Employer Identification Number (EIN) must be included in the ''Letter of Designation'' (*See* Appendix B). In such instances, identifying information for the Local Council is entered in Item 5 (Applicant Information, Legal Name) and Item 7 (Type of Applicant), and the EIN for the Fiscal Agent is entered in Item 6 on the Application for Federal Assistance (SF–424).

4. Geographic Location and Locality(ies) To Be Served

Applicants must describe the precise location of the project and boundaries of the area to be served at the beginning of the Project Description Summary/Abstract (*see* Part III, A. below) including the following: the State, county(ies), and specific locality(ies) (*e.g.*, city, town, township, borough, parish, or area served by another general purpose unit of local government, Indian Tribe, Regional Corporation (Alaska), or Native Hawaiian entity).

a. Applications received from different applicants (Local Councils) that are proposing to serve the same or overlapping geographic areas will be disqualified and not competed for an award. For example, if a Local Council proposing to serve all of County X applies, and a Local Council proposing to serve only Community A, which is within County X, also applies, both applications will be excluded from the review and not competed for an award.

b. Applicants proposing to serve all or part of a geographic area currently being served by an ELOA grantee whose grant is expected to be in effect on September 30, 2003 will be excluded and not competed for an award (*See* Appendices D and E).

5. Other Eligibility Information

a. Local Councils in each of the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico are eligible to apply under this announcement.

b. FY 2001 ELOA grantees whose grant project period ends on or before September 29, 2003 are eligible to apply for a FY 2003 grant under this program announcement. **Note:** The project period for grantees is noted in Block 9 of the ''Financial Assistance Award'' document.

c. To be considered eligible for a new award, applicants may not have a pending request to extend their existing ELOA grant project period beyond September 29, 2003.

d. The 31 Local Councils (and the localities served by those Local Councils) that received FY 2002 ELOA grants will not be considered for FY 2003 awards under this announcement (*See* Appendix E).

e. Only Local Councils, not individuals or individual organizations/agencies, are eligible to apply under this announcement.

f. Applicants proposing to use ELOA funds for construction purposes or for the purchase of real property will be disqualified and not competed for an award.

g. ''Letter(s) of Support'' for the Local Council from a local government entity(ies) will not be considered as meeting the eligibility requirements for a ''Letter of Designation.'' Applications from Local Councils that do not include a Letter of Designation from an appropriate entity of local government will be disqualified and not competed for an award.

h. Applications from Local Councils that are designated as the Local Council by an entity of State Government only, and not by an entity(ies) of local government, will be disqualified and not competed for an award.

J. Protections

1. No person, including a parent, shall be required to participate in any program of early childhood education, early learning, parent education, or developmental screening pursuant to the provisions of the Early Learning Opportunities Act.

2. Nothing in the Early Learning Opportunities Act shall be construed to affect the rights of parents otherwise established in Federal, State, or local law.

3. No entity that receives funds under the Early Learning Opportunities Act shall be required to provide services under this announcement through a particular instructional method or in a particular instructional setting to comply with the ELOA.

Part III. General Instructions for Preparing the Uniform Project Description

Part I—The Project Description—Overview

A. 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, all information requested through each specific evaluation criteria should 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.

B. General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, 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.

Part II—General Instructions for Preparing A Full Project Description

A. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

B. 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 from concerned parties 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.

C. Results and Benefits Expected

Identify the results and benefits to be derived. For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will families derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

D. Approach

Outline a plan of action, which 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, which 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. For example, for any project that will include informal caregivers, including friends, family and in-home child care providers, or caregivers who are somewhat isolated, such as child care providers who operate alone or in rural areas, please describe the means by which training and technical assistance will be made available to such informal and/or isolated caregivers and quality child care will be supported/assured. The Child Care Bureau is interested in encouraging the appropriate use of innovative approaches, especially including distance learning techniques and other uses of technology, to meeting the needs of child care providers and parents. If distance learning techniques, such as use of public television, satellite downlinks, or internet-based instruction, will be used for this purpose, please describe those techniques. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearances may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. Evaluation

Provide a narrative addressing how the results of the project and the conduct 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.

F. Geographic Location

Describe the precise geographic location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

G. Additional Information

Following are requests for additional information that need to be included in the application:

1. Organizational Profiles

Provide information on the applicant organizations(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. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate; *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

3. Third-Party Agreements

Include written 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.

4. Letters of Support

Provide statements from the community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

5. Plan for Project Continuance Beyond Grant Support

Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

H. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified in 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. The detailed budget must 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

The following are 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. For purposes of preparing the budget and budget 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

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

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.* 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, should be included under this category.

Justification: All procurement transactions shall 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.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

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, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in 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. It should be noted that 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.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.

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 in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

[Self-explanatory]

Part IV. Evaluation Criteria

Criterion 1. Objectives and Need for Assistance (25 Points)

1. The extent to which the applicant demonstrates the need for assistance including identification and discussion of its needs and resources assessment concerning early learning services and the relevancy of the results as the basis for determining its objectives and need for assistance for early learning services. Relevant data from the needs and resources assessment should be included. Participant and beneficiary information must also be included.

2. The extent to which the applicant describes the context of the proposed project, including the characteristics of the community, magnitude and severity of the problem, and the needs to be addressed.

3. The extent to which the applicant presents a vision of the project it anticipates developing; defines its goals and specific measurable objectives of the project; describes how its goals and objectives are linked together; and explains how implementation will fulfill the purposes of the ELOA. The applicant must demonstrate an understanding that goals are end products of a project, while objectives are measurable steps toward attainment of the goals. The applicant must demonstrate a thorough understanding of the importance of early learning services and activities that help parents, caregivers, and child care providers incorporate early learning into the daily lives of young children, as well as programs that directly provide early learning to young children.

4. The extent to which the applicant demonstrates how it will support activities/projects that maximize the use of resources through collaboration with other early learning programs, provide continuity of services for young children across the age spectrum, and help parents and other caregivers promote early learning with their young children. The applicant must provide information about how decisions will be made about who will provide each early learning service and/or activity funded through this grant.

5. The extent to which the applicant demonstrates that it has worked with local education agencies to identify cognitive, social, and emotional, and motor developmental abilities which are necessary to support children's readiness for school; that the programs, services, and activities assisted under this title will represent developmentally appropriate steps toward the acquisition of those abilities; and, that the programs, services, and activities assisted provide benefits for children cared for in their own homes as well as children placed in the care of others.

Criterion 2. Approach (25 Points)

1. The extent to which the applicant describes its project design, services, product development and dissemination. The applicant should present an approach that: (a) Reflects an understanding of the characteristics, needs, and services currently available to the target population; (b) is based on current theory, research, and/or best practices; (c) is appropriate and feasible; (d) can be reliably evaluated; (e) could be replicated, if successful; and (f) can be sustained after Federal funding has ceased.

2. The extent to which the applicant includes a detailed plan that identifies goals and objectives, relates those goals and objectives to the findings of its needs and resources assessment, and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives. The plan must demonstrate that each of the project objectives and activities supports the current needs and resource assessment and can be accomplished with the available or expected resources during the proposed project period.

3. The extent to which the plan: (a) Describes the sequence and timing of the major activities, tasks and subtasks, important milestones, and reports, and indicates when each will be accomplished (a timeline is recommended). The applicant's plan should 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. When accomplishments cannot be quantified by activity or function, the accomplishments are listed in chronological order to show the schedule of accomplishments and target dates.

4. The extent to which the applicant: (a) Specifies who will conduct the activities under each objective; (b) describes how subcontractors will be chosen and held accountable for carrying out activities in compliance with this application, and grant terms and conditions; (c) describes how actual and perceived conflict of interest will be avoided if the Local Council is also a direct service provider; and (d) indicates how programs, services, and activities will be provided based on the family's ability to pay (for those services that customarily require a payment).

5. The extent to which the applicant describes how the project will form collaborations among local early learning, youth, social service, educational providers (including faith-based organizations) and, as appropriate, organizations that can facilitate distance learning, to maximize resources and concentrate efforts on areas of greatest need.

6. The extent to which the applicant describes its work with local educational agencies to identify cognitive, social, emotional, and motor developmental abilities, which are necessary to support children's readiness for school.

7. The extent to which the applicant's programs, services, and activities assisted under ELOA will represent developmentally appropriate steps toward the acquisition of those abilities.

8. The extent to which the applicant's programs, services, and activities assisted under this announcement provide benefits for children cared for in their own homes as well as children placed in the care of others.

9. The extent to which the applicant's plan: (a) Describes how the project will be structured and managed; (b) defines the procedures to be used to determine whether the project is being conducted in a manner consistent with the work plan; (c) lists organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution to the project; (d) discusses the impact of the project's various activities on the project's effectiveness including factors that may affect project implementation or outcomes and presents realistic strategies for resolution of these difficulties; (e) describes how timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled; and (f) describes how unanticipated problems will be resolved to ensure that the project will be completed on time and with a high degree of quality.

10. If the project includes the use of any distance learning techniques in support of informal or isolated child care providers, the extent to which the purposes of distance learning are clearly described and appropriate objectives are identified for specific types of child care providers. (If distance learning is not an element of the project, then this sub-criterion does not apply.)

Criterion 3. Results and Benefits Expected (15 Points)

1. The extent to which the applicant specifies the number of children and families to be served and how the services to be provided will be funded consistent with the results of the needs assessment.

2. The extent to which the applicant explains how the expected results will benefit the population to be served in meeting its needs for early learning services and activities.

3. The extent to which the applicant demonstrates that completion of the proposed objectives will result in specific, measurable results.

Criterion 4. Evaluation (15 Points)

1. The extent to which the applicant appropriately links its needs and resources assessment, proposed activities, and anticipated results and benefits, and describes how the proposed evaluation will demonstrate the effectiveness of its activities and services in addressing the needs identified under its needs and resources assessment. The applicant must demonstrate how the results or benefits identified for each objective will serve as standards for evaluating the achievement of objectives at the end of the project period (*i.e.*, 17 months).

2. The extent to which the applicant's evaluation plan includes a process component that describes the activities of the project, how the project will operate, how well the design was followed, and the extent to which it produced the expected results. It should contain an outcome component with output and outcome measures. For example, in addition to numbers of families and children served, what benefits did families derive from these services?

3. The extent to which the applicant that demonstrates the relationships among the needs identified in the needs and resources assessment, the activities/interventions proposed, and anticipated results and benefits. For example, the applicant could provide a diagram (logic model) for demonstration purposes.

4. The extent to which the design and implementation of its evaluation plan is methodologically sound, appropriate to the activities/interventions implemented, and demonstrates the extent to which program goals/objectives will be achieved.

5. The extent to which the applicant has allocated sufficient funds in the project budget to implement the proposed evaluation activities.

6. The extent to which the evaluation plan reflects sensitivity to technical, logistical, cultural, and ethical issues that may arise and includes realistic strategies for the resolution of difficulties.

7. The extent to which the evaluation plans adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate.

8. If any distance learning technique is to be employed, the extent to which it is related to specific desired results for specified providers and there is a means by which to test for these results or contrast the results of distance learning with other techniques for providing information and assistance and supporting quality among child care providers. (If distance learning is not an element of the project, this sub-criterion does not apply.)

Criterion 5. Staff and Position Data/Organizational Profiles (10 Points)

1. The extent to which the applicant (Local Council) provides information and evidence of its management and administrative structure including its organizational capacity, and if applicable, that of its Fiscal Agent. Organizational capacity includes: (a) Demonstrated ability to manage a project of the proposed size and scope; (b) demonstrated successful experience with the target population; (c) a Local Council (and/or designated individuals) that is qualified and experienced to manage the project; (d) a demonstrated commitment to developing and sustaining working relationships among key stakeholders; (e) demonstrated experience and commitment of any third parties including consultants; and (f) an appropriate organizational structure, including the management information system, to implement the project.

2. The extent to which the applicant (Local Council) demonstrates its staff and organizational experience particularly in areas of facilitating needs and resources assessments and collaborative activities as they relate to early learning services. The applicant must also document its experience in

facilitating such activities and the length of time the applicant has been involved in these activities. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

3. The extent to which the applicant provides position descriptions and/or resumes of key personnel, including those of consultants, which clearly relate to the personnel staffing required to achieve the ELOA project objectives and the proposed budget. The position descriptions and resumes must clearly describe the qualifications, any specialized skills, and duties for each position necessary for overall quality of the project. Resumes must be included if individuals have been identified for positions in the application. The applicant must also list organizations and consultants who will participate in the project along with a short description of the nature of their effort or contribution.

4. The extent to which the applicant describes its agency including the types, quantities, and costs of services it provides. The applicant must discuss the role of other organizations that will be involved in providing direct services to children and families through this grant.

5. If the Local Council plans to work with a fiscal agent, that entity, its qualifications, and its relationship to the Council must be described. The extent to which the applicant and/or its fiscal agent demonstrates that it has sufficient fiscal and accounting capacity to ensure prudent use, proper disbursement, and accurate accounting of funds.

6. The extent to which the applicant provides organizational charts for the Local Council, its members, and any third-party, including a list of all sites, addresses, phone numbers, and staff contacts and titles.

7. The extent to which the applicant demonstrates active participation of the entire Local Council in the development of its application and the project, including a description of the ongoing role of the Local Council in the implementation of the project, and methods for documenting its participation. Such evidence includes but is not limited to minutes of council meetings, council resolutions, newspaper articles, and community surveys.

8. The extent to which the applicant includes third-party agreements with cooperating entities, which detail the scope of work to be performed, work schedules, remuneration, and any other terms and conditions that structure or define the relationship. Information about new agreements that will be executed with subgrantees, contractors, or other cooperating entities should also be included. If no written agreements exist, sample/draft agreements may be submitted.

9. The extent to which the applicant demonstrates support for the project from parents, the community at-large, and other key leaders and stakeholders.

10. The extent to which the applicant demonstrates a feasible plan for securing resources and continuing project activities, if applicable, after Federal assistance has ceased. The applicant should demonstrate its understanding that the ACF is interested in funding projects that will be completed, self-sustaining, or financed by other than ELOA funds at the end of the project period.

Criterion 6. Budget and Budget Justification (10 Points)

1. The extent to which the applicant demonstrates that the funds requested will be used for early learning services that are allowed under this announcement. The discussion must refer to (1) the budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and (2) the results or benefits identified under Criterion 3 above.

2. The extent to which the project's costs are reasonable in view of the activities to be carried out, that the funds are appropriately allocated across component areas, and that the budget is sufficient to accomplish the objectives.

3. The extent to which the applicant's narrative budget justification provides detailed calculations that describe how the categorical costs are derived. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. For example: To compute salary costs for a full-time employee who will be employed for the entire 17-months of the ELOA project, divide the annual salary by 12 and then multiply by 17. To compute the costs for a full-time employee who will be paid by the hour for the entire 17-month project, multiply 2,947 hours by the hourly wage. The full-time equivalent for a 12-month position is 2,080 hours. The applicant should specify the costs for the entire 17-month ELOA project period, not separate costs into 12-month and a five-month budgets.

4. The extent to which the applicant provided sufficient funds in the project budget to implement the proposed evaluation activities.

5. If there is a distance learning component of the project, and that component includes evaluation of the efficacy of any distance learning technique(s) for child care providers, the extent to which the costs of that evaluation are adequately considered and provided for in the budget.

6. Funds must be allocated to allow two representatives from the Local Council to attend one two-day grantee meeting in Washington, DC.

7. Applicants are encouraged to provide Letter(s) of Commitment from the State, local public and private organizations/agencies, and any other source that will be contributing toward the Applicant's non-Federal share of project costs. The Letter(s) of Commitment should state the amount to be contributed and the form of the contribution (*i.e.*, cash or in-kind). **Note:** Letter(s) of Commitment are not to be confused with Letter(s) of Support or with the Letter of Designation by an Entity of Local Government.

Part V. Application and Selection Process

A. Assistance to Prospective Grantees

Potential grantees should direct questions about application process and forms to the ACYF Operations Center at 1–800–351–2293 and refer to the Program Announcement No. ACYF–PA–CCB–2003–01. Questions about the ELOA program requirements may be directed to Carol L. Gage, ELOA Federal Project Officer, at (202) 690–6243 or *cgage@acf.hhs.gov.*

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided in the application package and in accordance with the guidance provided in Parts V and VI below.

C. Paperwork Reduction Act of 1995 (Public Law 104–13)

Public reporting burden for this collection of information is estimated to average eight hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The project description is approved under Office of Management and Budget (OMB) Control Number 0970–0139, which expires December 31, 2003.

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.

D. Notification Under Executive Order 12372

This program announcement is not covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.''

E. Availability of Forms and Other Materials

A copy of the standard forms that must be submitted as part of an application and instructions for completing the application are provided in the application package. These standard forms can also be downloaded and printed from the following Web site: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Additional copies of this announcement may be obtained by calling 1–800–351–2293.

F. Application Consideration and Selection

Each application will undergo an eligibility and conformance review by Federal Child Care Bureau staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the evaluation criteria in Part IV of this program announcement. This review will be conducted in Washington, DC by panels of Federal and non-Federal experts knowledgeable in the areas of literacy, early learning, child care, early childhood education, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses. The Child Care Bureau will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Commissioner, ACYF.

Subject to the recommendation of the Child Care Bureau's Associate Commissioner, the Commissioner, ACYF, will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; (5) the statutory requirement that reserves funds for Indian Tribes, Alaska Native Regional Corporations, and Native Hawaiian entities; and (6) other relevant considerations. The Commissioner may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, and the budget period for which support is given, and the total project period for which support is provided. Organizations whose applications will not be funded will be notified in writing by the Commissioner, ACYF. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part VI. Submission Instructions

A. Contents of Application

A complete application consists of the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–92). Follow the instructions on the back of the form. In Item 5 on the SF–424, enter the name of the applicant [Local Council]. Enter the Employer Identification Number (EIN) of the Local Council, or if applicable, its Fiscal Agent, in Item 6. In Item 8 on the SF–424, check ''New.'' In Item 10, clearly identify the Catalog of Federal Domestic Assistance program title and number (*i.e.*, Early Learning Opportunities Act, 93.577). A signature on the application constitutes an assurance that the applicant will comply with the relevant Departmental regulations contained in 45 CFR part 74 or part 92.

2. Budget Information—Non-Construction Programs (Standard Form 424A). Follow the instructions on the back of the form.

3. Assurances—Non-Construction Programs (Standard Form 424B). A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. The applicant must certify its compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications.

4. Certification Regarding Lobbying. Applicants must include an executed Certification Regarding Lobbying prior to receiving an award in excess of $100,000.

5. A Cover Letter that includes the announcement number and contact information for the applicant. The letter must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award.

6. A signed Letter(s) of Designation for the Local Council from a local government entity(ies) that explains its authority to make such a designation.

7. Information on the membership composition of the Local Council.

8. A Tribal Resolution, if applicable.

9. A Table of Contents.

10. A Project Description Summary/Abstract (one page maximum)—Clearly mark this page with the applicant's name as shown in Item 5 on the SF–424, identify the title of the proposed project as shown in Item 11, and the service area as shown in Item 12 of the SF–424. The Project Description Summary/Abstract must not exceed 300 words. The first paragraph must describe the precise location of the project and the boundaries of the area to be served including the following: The State, county(ies), specific locality(ies) (*e.g.*, city, county, borough, township, parish, etc.) and/or region(s). Care should be taken to produce a Summary/Abstract that accurately and concisely reflects the proposed project. It should briefly describe the objectives of the project, the approach to be used, and the results and benefits expected.

11. *The Project Narrative.* The applicant is strongly encouraged to use the evaluation criteria in Part IV to organize its response to Part III, the Uniform Project Description. Specific information should be provided that addresses all components of each criterion. It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria, and adheres to recommended page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the field of early learning as defined under this announcement.

The pages of the project description must be double-spaced, printed in black only, printed on only one side, with no less than one-inch margins, and numbered. Applicants are strongly encouraged to limit this portion of their application to no more than 100 pages.

12. *Appendices.* The recommended maximum number of pages for

supporting documentation is 50 numbered pages. These documents might include excerpts from the needs and resources assessment, resumes/job descriptions, photocopies of news clippings, documents related to the involvement and participation of the Local Council, and evidence of its efforts to coordinate early care and education services at the local level including letters of support and/or third-party agreements.

B. Submission of Application

To be considered for funding, the applicant must submit one signed original and two copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in blue ink. The original must be stapled (back and front) in the upper left corner. Rubber bands may be used to secure the pages of the two copies. The original application and the two copies must be submitted in a single package.

Each application will be duplicated, therefore, please do not use or include colored paper, colored ink, separate covers, binders, clips, tabs, plastic inserts, over-sized paper, videotapes, or any other items that cannot be easily duplicated on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including the supporting documentation. Applicants are advised that a copy (not the original) of the application as submitted will be reproduced by the Federal government for review by the panel of evaluators.

Dated: June 19, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A.—Sample 1—Letter of Designation of the Local Council by an Entity of Local Government

DATE

To Whom It May Concern:

Under the authority granted by the [Specify Source of Authority to Act on behalf of the Entity of Local Government], I/We hereby designate the [Insert Name of Local Council] as the eligible Local Council for the [Insert the name(s) of localities to be served by the Local Council (*e.g.*, city(ies), county(ies), borough(s), *etc.*)] for the purposes of applying for a discretionary grant under the Early Learning Opportunities Act (ELOA) program. I/We also authorize the [Insert Name of Local Council] to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to the ELOA Program Announcement No. ACYF–PA–CCB–2003–01, and to administer the implementation of the project if funded.

As required under the statute governing ELOA, the [Insert Name of Local Council] includes: (1) Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement; (2) parents; (3) other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and (4) other key community leaders.

The [Insert Name of Local Council] was responsible for preparing and submitting the enclosed application for the ELOA discretionary grant program.

Sincerely,

Signed and dated by the authorized entity of local government (*e.g.*, mayor, city/county manager, city/county executive, city/county council, board of supervisors, select board, *etc.*)

Appendix B.—Sample 2—Letter of Designation of the Local Council and identification of the Fiscal Agent by an Entity of Local Government

DATE

To Whom It May Concern:

Under the authority granted by the [Specify Source of Authority to Act on behalf of the Entity of Local Government], I/We hereby designate the [Insert Name of Local Council] as the eligible Local Council for the [Insert the name(s) of localities to be served by the Local Council (*e.g.*, city(ies), county(ies), borough(s), etc.)] for the purposes of the Early Learning Opportunities Act (ELOA) discretionary grant program. I/We also authorize the [Insert Name of Local Council] to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to the ELOA Program Announcement No. ACYF–PA–CCB–2003–01, and to administer the implementation of the project if funded.

I/We hereby authorize the [Insert Name of Fiscal Agent] to serve as the Fiscal Agent for the [Insert Name of Local Council] and the Fiscal Agent's Employer Identification Number (EIN) is: _____ and this EIN has been entered in Item 6 on the Application for Federal Assistance (SF–424).

As required under the statute governing ELOA, the [Insert Name of Local Council] includes: (1) Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement; (2) parents; (3) other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and (4) other key community leaders.

The [Insert Name of Local Council] was responsible for preparing and submitting the enclosed application for the ELOA discretionary grant program.

Sincerely,

Signed and dated by the authorized entity of local government (*e.g.*, mayor, city/county manager, city/county executive, city/county council, board of supervisors, select board, etc.)

Appendix C.—Sample Format for Providing Information on the Composition of the Local Council

Members name	Title	Agency	Role
L.M. Zilka	Superintendent	Emerald City Public Schools	C
Jessica Lawson	Director	Happy Days Child Care Center	A
Tanja Bos	Director	Child Care Resource and Referral	C
Angela Bower	Director	Head Start	B
Monica Parkzes	Director	County Health Department	C
Marsha Staimer	Chair	Emerald City Chamber of Commerce	D
Peggy Jo Picard	Family Child Care Provider		C
Sarah Kyrklund	Autism Consultant	Emerald City Public Schools	A
Susan Mali	Parent of Young Child		B
Susan LaCombe	President	Emerald County Community College	A
Alberta Halvorsen	VP	Emerald City United Way Services	D
Frank Chavez	County Manager	Emerald County	D
Christopher Lawson	Parent of Young Child		B
Harriet Kelsey	Director	Emerald County Social Services	C
Morena Flores	Director	La Puerta Fundacion	D

Members name	Title	Agency	Role
T.V. Reid	President	Emerald City Bank	D
Alex Mejia	Director	Early Childhood Services, Inc.	A
Amelia Traversie	Program Parent	Parents and Teachers	B
Ngozi Onunaku	Director	Emerald City Child Care Consortium	A
Nick Maynard	Director, Special Education	Emerald City Elementary School	A

Legend:
A = Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement.
B = Parents.
C = Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services.
D = Other key community leaders.

Appendix D.—FY 2001 Early Learning Opportunity Act Grantees and Geographic Service Areas

Twenty-six Early Learning Opportunity Act (ELOA) grants were awarded in FY 2001. Listed below is the name of each grantee, the title of its project, its geographic service area, and its expiration date. These 26 grants were all originally awarded a 17-month project period (*i.e.*, September 30, 2001–February 28, 2003). However, 24 of the 26 grantees have received no cost extensions to their project period end dates. The length of the extensions varies from grantee to grantee with the shortest extension being two months and the longest being 12 months, the maximum allowed. The project period for each grantee is specified below. If you have questions, you may contact Carol L. Gage, the Federal Project Officer for these ELOA grants, at 202–690–6243 or *cgage@acf.hhs.gov.*

• *Alameda County Children and Families Commission, San Leandro, CA 94577*

Hand-in-Hand: The Alameda County Early Learning Partnership.

Project Period: September 30, 2002–June 30, 2003.

Alameda County is located on the eastside of San Francisco Bay and extends from the cities of Berkeley and Albany in the north to Fremont in the south. Alameda County is bounded on the north by Contra Costa County, on the south by Santa Clara County, on the southeast corner by Stanislaus County, on the east by San Joaquin County, and on the west by the San Francisco Bay.

• *Bristol Bay Native Association, Dillingham, AK 99576*

Bristol Bay Native Association Early Learning Opportunities Program.

Project Period: September 30, 2002–February 28, 2004.

The Bristol Bay region is located in Southwest Alaska. Its regional boundaries under the Alaska Native Claims Settlement Act extend about 350 miles North to South, and about 230 miles East to West. The region consists of 32 communities, 29 of which are federally recognized tribes. There are three separate census divisions: Bristol Bay Borough Census Area (three communities), the Dillingham Census Area (12 communities), and the Lake and Peninsula Borough Census Area (17 communities).

• *Central Council Tlingit & Haida Indian Tribes of Alaska, Juneau, AK 99801*

Encircled in a Blanket of Wellness: Children's Early Learning Mental Health

Project Period: September 30, 2002–October 31, 2003.

This project serves the geographic area known as ''Southeast Alaska'' including the three large communities of Juneau, Sitka, and Ketchikan, and approximately 20 other communities. Southeast Alaska is a 600-mile long island archipelago and coastal strip also referred to as the ''panhandle'' of the state. The panhandle stretches from the Tsimpshian Native Village of Metlakatla in the South, to the Tlingit Native Village of Yakutat in the North.

• *Community Connections, Inc., Bluefield, WV 24701*

Mercer County Early Learning Project.

Project Period: September 30, 2002–February 28, 2004.

This is a county-wide project. Mercer County is located in the most southern part of West Virginia. The largest population base is located in the city of Bluefield; the County seat is Princeton.

• *Community Coordinated Child Care, Hillside, NJ 07205*

Union County Early Learning Opportunities Project.

Project Period: September 30, 2002–June 30, 2003.

Union County is at the center of the New York-New Jersey Metropolitan-Region, along the Boston—Washington Corridor. It is bounded by Essex County to the north, Morris and Somerset Counties to the west, and Middlesex County to the south. The Arthur Kill waterway separates the County from Staten Island, New York to the east. The County seat is Elizabeth.

• *Durham's Partnership for Children, Durham, NC 27707*

The Literacy and School Readiness Enhancement Pilot Project.

Project Period: September 30, 2002–August 30, 2003.

This project serves Durham and Orange Counties. These counties are contiguous counties that are located in the Research Triangle area of central North Carolina.

• *Early Childhood Care and Education Council of Multnomah County, Portland, OR 97204*

Multnomah County Components of Early Learning.

Project Period: September 30, 2002–June 30, 2003.

The service area is Multnomah County, which includes the City of Portland.

• *Fairbanks North Star Borough Early Childhood Development Commission (FNSB), Fairbanks, AK 99707*

For all Families, A Community Model: Providing Early Childhood Education for Families and Communities and Promoting Excellence in Child Care in the FNSB.

Project Period: September 30, 2002–October 31, 2003.

The Borough is located in the central eastern half of Alaska and includes Fairbanks, Alaska and many surrounding small communities and rural areas covering 7,361 square miles.

• *Family Central, Inc. on Behalf of Broward School Readiness Coalition, Inc., Fort Lauderdale, FL 33316*

Broward Investment in Quality Care for Kids (BrIQCK).

Project Period: September 30, 2002–June 30, 2003.

Broward County is bounded by Miami-Dade County on the south, the Everglades and Collier County on the West, Palm Beach County on the north, and the Atlantic Ocean on the east. Major cities include Fort Lauderdale, Hollywood, and Pompano Beach.

• *Foundation for Early Learning, Seattle, WA 98115*

Strengthening Early Learning Opportunities in King County Communities.

Project Period: September 30, 2002–May 30, 2003.

This is a county-wide project serving King County including the City of Seattle.

• *Gritman Medical Center on Behalf of the Early Childhood Service Council, Moscow, ID 83843*

Early Learning Collaborative Project In A Rural Region of Northern Idaho.

Project Period: September 30, 2002–September 29, 2003.

This is a county-wide project in Latah County, which is located in North Central Idaho.

• *Lenawee Intermediate School District, Adrian, MI 49221*

Lenawee's Child (*H*elping to *I*ncrease *L*earning and *D*evelopment).

Project Period: September 30, 2002–February 28, 2003.

Lenawee County is located in South Central Michigan along the Ohio border.

• *Mid-America Regional Council (MARC), Kansas City, MO 64105*

Early Childhood Excellence Project.

Project Period: September 30, 2002–June 30, 2003.

MARC serves as the association of city and county governments and the metropolitan planning organization for the bi-state Kansas City region. MARC serves an eight county area that includes Cass, Clay, Jackson, Platte, and Ray Counties in Missouri and Johnson, Leavenworth, and Wyandotte Counties in Kansas.

• *Mid Coast Access to Child Care, Nobleboro, ME 04555*

Enhancing Quality of Early Care.

Project Period: September 30, 2002–February 28, 2003.

The boundaries of the service area include the Counties of Waldo, Knox, Lincoln, and Sagadahoc County. It also includes the communities of Brunswick and Harpswell located within the northernmost part of Cumberland County.

• *Mono County Office of Education on Behalf of the Mono County Child Care Council, Mono, CA 93546*

Eastern Sierra Early Learning Collaborative.

Project Period: September 30, 2002–December 31, 2003.

The service area includes Alpine and Mono Counties in the eastern part of California.

• *Napa County Office of Education on Behalf of the Napa County Child Care Planning Council, Napa, CA 97558*

The E.A.R.L.Y. Project: Enhancing Accessibility and Readiness for Learning by Young Children.

Project Period: September 30, 2002–June 30, 2003.

Napa County is located in the Northern San Francisco Bay area, southwest of Sacramento, north of Oakland/Berkeley, and northeast of San Francisco.

• *New Haven Public Schools, New Haven, CT 06519*

New Haven Early Learning Opportunities Program.

Project Period: September 30, 2002–February 28, 2004.

The geographic location of the targeted service area is the City of New Haven. New Haven consists of 20 different neighborhoods and a federally-designated Empowerment Zone.

• *People's Regional Opportunity Program, Portland, ME 04101*

Cumberland County ACCESS/CITE Partnership for Child Care.

Project Period: September 30, 2002–June 30, 2003.

The geographic area covered by this partnership is the cities and towns in Cumberland County with the exception of Brunswick, Harpswell, and South Harpswell.

• *San Bernardino County Human Services System, San Bernardino, CA 92415*

San Bernardino Early Learning Opportunities Project.

Project Period: September 30, 2002–February 28, 2004.

This is a county-wide project in San Bernardino County, which is located in the center of Southern California. It is bounded by the States of Arizona and Nevada, and the Counties of Riverside, Los Angeles, Inyo, and Orange.

• *San Mateo County Superintendent of Schools on Behalf of the San Mateo County Child Care Partnership Council, Redwood City, CA 94065*

San Mateo County Early Learning Project.

Project Period: September 30, 2002–April 30, 2003.

San Mateo County is bounded by the Pacific Ocean to the west, the San Francisco Bay to the east, San Francisco to the north, and the City of San Jose and the County of Santa Clara to the south. It includes the cities of Redwood City, San Mateo, Daly City, East Palo Alto, Menlo Park, and South San Francisco.

• *Southern Iowa Economic Development Association on Behalf of the Mahaska-Wapello Empowerment Area, Ottumwa, IA 52501*

Parents As Teachers Expansion Program.

Project Period: September 30, 2002–June 30, 2003.

The Mahaska-Wapello Empowerment Area includes the six Counties of Appanoose, Davis, Jefferson, Keokuk, Mahaska, and Wapello. These Counties are located in the lower three tiers of Southern Iowa.

• *United Way of Greater Tucson, Tucson, AZ 85754*

First Focus on Kids: Coordinating Early Learning Opportunities for Children and Their Families.

Project Period: September 30, 2002–August 31, 2003.

This project serves the following zip codes in and around the City of Tucson: 85705–06, 85710, 85711–13, 85716, 85719, 85730, and 85745–46.

• *United Way of New York City, New York, NY 10016*

New York City Early Learning Project.

Project Period: September 30, 2002–October 31, 2003.

This project serves the five Boroughs of New York City including Brooklyn, Bronx, Manhattan, Queens, and Staten Island.

• *United Way Services, Richmond, VA 23241*

Greater Richmond Early Development Coalition.

Project Period: September 30, 2002–August 31, 2003.

The geographic area served by this Coalition includes the City of Richmond, and the Counties of Chesterfield and Henrico.

• *United Way of Southeastern Pennsylvania, Philadelphia, PA 19103*

Children Ready: Invest in Success.

Project Period: September 30, 2002–February 28, 2004.

The project boundary is the City of Philadelphia.

• *Youth Health Service, Inc., Elkins, WV 26241*

Quality Care: Improving the Quality of Early Learning Services in Two Impoverished Rural Counties.

Project Period: September 30, 2002–August 31, 2003.

The target communities of this project are in Barbour and Randolph Counties in the north and west central parts of West Virginia.

Appendix E.—FY 2002 Early Learning Opportunity Act Grantees and Geographic Service Areas

Thirty-one Early Learning Opportunity Act (ELOA) grants were awarded in FY 2002. Listed below is the name of each grantee, the title of its project, and its geographic service area. The 17-month project period for these grants is September 30, 2002–February 28, 2004. The Federal Project Officer for these ELOA grants is Carol L. Gage, who can be reached at 202–690–6243 or *cgage@acf.hhs.gov.*

• *Beaufort County Council on behalf of the Beaufort County Early Childhood Coalition, Beaufort, SC 29901*

Beaufort County Early Childhood Coalition.

This is a county-wide project in Beaufort County.

• *Broome Community College on behalf of the Broome County Early Childhood Coalition, Binghampton, NY 13902*

Building Brighter Futures For Broome.

This is a county-wide project in Broome County.

• *Cambridge Public Schools on behalf of Cambridge 0–8 Council, Cambridge, MA 02141*

Accelerating Language and Literacy for Children, Families, and Providers.

The project boundary is the city of Cambridge.

• *Communities in Schools of Caldwell County Inc., Lenoir, NC 28645*

Early Learning Opportunities Movement.

This project serves Caldwell County, a rural county of 450 square miles located in the foothills of Appalachia in northwestern North Carolina. Lenoir is the County's largest town and county seat.

• *DC Department of Human Services, Washington, DC 20032*

DC Early Learning Opportunities Program.

The District of Columbia is 53 square miles in area and is divided into eight political subdivisions or wards. This project will serve Wards 1, 7, and 8.

• *Easter Seals New Hampshire on behalf of the Early Learning Lasts a Lifetime Local Council of Southeastern New Hampshire, Manchester, NH 03103*

Links to Early Learning.

This project serves all of Rockingham and Strafford Counties in southeastern New Hampshire (the Seacoast region), which is bordered by Maine to the east, Massachusetts to the south and Merrimack and Hillsborough Counties of New Hampshire to the north and west, respectively.

• *Economic Development and Industrial Corporation on behalf of the 0–8 Coalition, Boston, MA 02114*

Boston Learns: An Early Literacy Collaborative for Children, Families, and Educators.

This is a city-wide project serving the city of Boston including Mattapan, Roslindale and Hyde Park, three of Boston's neighborhoods.

• *Educational Service District 112 on behalf of the Support Early Learning and Families Local Council, Vancouver, WA 98661*

Every Moment Counts: Achieving School Readiness in Clark County.

This project serves Clark County, located in southwestern Washington. It is across the Columbia River from Portland, Oregon.

• *El Paso Community College on behalf of the Strong Families, Strong Future Council, El Paso, TX 79998*

Using a Promotor de Salud to Promote Early Learning in At-Risk Populations along the US-Mexico Border.

El Paso County is located in the far west corner of Texas, and is bordered by Mexico to the south, Hudspeth County, TX to the east, and the New Mexico state line to the north and west.

• *Fairfax County Board of Supervisors, Fairfax, VA 22035*

Fairfax Collaborative.

The geographic area served is Fairfax County including the cities of Falls Church and Fairfax.

• *Family Connection Partnership, Atlanta, GA 30303*

South Georgia EXCEL (Excellence in Childcare and Learning).

This project serves the counties of Coffee, Crisp, Mitchell, and Turner.

• *Franklin Northwest Supervisory Union on behalf of the Franklin County Early Childhood Advisory Council, Swanton, VT 05488*

Franklin County Early Learning Opportunities Project.

This is a county-wide project in Franklin County, which is in the northwestern corner of Vermont, bordered by Canada, Lake Champlain, and the Green Mountains.

• *Good Beginnings Alliance, Honolulu, HI 96813*

Expanding Oahu's Early Learning Opportunities.

The island of Oahu is the geographic area to be covered by this project, with special attention focused on the communities of Waianae, Waimanalo, and Kalihi.

• *Hampton Roads Partnership, Norfolk, VA 23510*

Square One School Readiness Initiative.

This project will serve the area known as Hampton Roads a region including 17 localities in the southeastern corner of the Commonwealth of Virginia. Hampton Roads localities are the cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Smithfield, Suffolk, Virginia Beach, and Williamsburg and the counties of Gloucester, Isle of Wight, James City, Southampton, Surry, and York.

• *Health Improvement Partnership of Spokane County on behalf of the Spokane Regional Child Care Initiative, Spokane, WA 99201*

Strengthening Early Learning in Spokane County.

This is a county-wide project in Spokane County.

• *Heart of West Michigan United Way on behalf of the Kent County Family and Children's Coordinating Council, Grand Rapids, MI 49503*

Connections For Children.

This is a county-wide project in Kent County located in West Michigan.

• *Huntington West Virginia Housing Authority on behalf of the Cabell-Wayne Early Childhood Council, Huntington, WV 25701*

ERASE (Education, Rurality, Accessibility, Service, and Economic) Barriers Project.

This project serves the communities in both Cabell and Wayne County.

• *Lancaster County First Steps, Lancaster, SC 29720*

Lancaster County First Steps.

This is a county-wide project in Lancaster County.

• *Lowell Public Schools District on behalf of Lowell Community Partnership for Children, Lowell, MA 01852*

Lowell Community Partnerships for Children Early Learning Opportunities Initiative.

This project serves the city of Lowell (Middlesex County).

• *Mayor's Literacy Task Force, Chandler, AZ 85225*

Chandler Steps to Learning Project: A Community-based Early Learning and Parent Assistance Program.

This project will serve the city of Chandler located in Maricopa County.

• *Miami-Dade School Readiness Coalition, Miami, FL 33129*

Early Authors Program.

This is a county-wide project serving Miami-Dade County, which is located in southeastern, Florida, bounded by the Atlantic Ocean to the east, Broward County to the north, and Monroe County to the south and west. The extreme northwest corner of Miami-Dade County is bounded by Collier County.

• *Minneapolis Youth Coordinating Board, Minneapolis, MN 55415*

Minneapolis Youth Coordinating Board Readiness Initiative.

This project boundary is the city of Minneapolis.

• *Osage Tribe of Indians of Oklahoma, Pawhuska, OK 74056*

Osage Nation Early Learning Center.

This project will serve Osage County in Northeastern Oklahoma, which is also known as the Osage Indian Tribal Reservation.

• *South Plains Community Action Association, Inc. on behalf of South Plains Early Childhood Council, Levelland, TX 79336.*

On the Road with Literacy.

The geographic area served includes the following 15 counties in the South Plains area of west Texas: Bailey, Cochran, Crosby, Dickens, Garza, Hale, Hockley, Lamb, Floyd, Lynn, Lubbock, Terry, King, Motely, and Yoakum.

• *The Clayton Foundation, Denver, CO 80205*

Early Learning Opportunities Project.

The project will serve the city and county of Denver.

• *The Providence Plan on behalf of the Ready to Learn Providence Local Council, Providence, RI 02903*

Ready to Learn Providence

This project will serve the city of Providence.

• *Town of Manchester on behalf of the Manchester School Readiness Council, Manchester, CT 06040*

Manchester Early Learning Opportunities Project.

This project serves the Town of Manchester in Hartford County. Manchester is located in the north central region of Connecticut, and is nine miles east of the capital city of Hartford, and approximately 95 miles from Boston, Massachusetts.

• *United Way of Harrisonburg & Rockingham County, Inc., Harrisonburg, VA 22803*

The Reading Road Show Early Literacy Initiative.

The areas to be served by this project are Rockingham County and the City of Harrisonburg, which are centrally located in the Shenandoah Valley in west-central Virginia. The county is bounded on the west by the Allegheny Mountains and on the east by the crest of the Blue Ridge Mountains.

• *United Way of Southeastern Idaho, Pocatello, ID 83204*

Bannock County Ready to Learn Project.

This is a county-wide project in Bannock County located in southeast Idaho.

• *Webster County Board of Education on behalf of the Early Care and Education Consortium, Webster Springs, WV 26288*

More by Four—Ready by Five.

This is a county-wide project in Webster County, which is located in the central part of the state.

• *Western Maine Centers for Children on behalf of Western Maine Access, Wilton, ME 04294*

Western Maine ACCESS Early Learning Opportunity Grant.

The geographic area served by this project is Androscoggin, Franklin, and Oxford Counties.

[FR Doc. 03–16099 Filed 6–24–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0075]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 25, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Administrative Detention and Banned Medical Devices (OMB Control Number 0910–0114)—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334(g)), to detain during establishment inspections devices that are believed to be adulterated or misbranded. FDA issued a final rule that published in the **Federal Register** of March 9, 1979 (44 FR 13234 at 13239), on administrative detention procedures, which includes, among other things, certain reporting requirements under § 800.55(g) and (k) (21 CFR 800.55(g) and (k)) and recordkeeping requirements. Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. The final rule for banned devices that published in the **Federal Register** of May 18, 1979 (44 FR 29214 at 29221), contained certain reporting requirements under §§ 895.21(d) and 895.22 (21 CFR 895.21(d) and 895.22). Section 895.21(d) states that if the Commissioner of Food and Drugs (the Commissioner) decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the **Federal Register** and this document will contain the finding that the substantial risk of illness or injury exists. The document will also contain the reasons why the proceeding was initiated, an evaluation of data and information obtained under other provisions of the act, any consultations with the panel, and a determination as to whether the device could be corrected by labeling or change of labeling, or change of advertising, and if that labeling or change of advertising has been made. Under § 895.21(d), any interested person may request an informal hearing and submit written comments. Under § 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

Respondents to this collection of information are those manufacturers, distributors, or importers whose products FDA seeks to detain or ban. As previously stated, the collection of data and information under these regulations is conducted on a very infrequent basis and only as necessary.

In the **Federal Register** of March 17, 2003 (68 FR 12706), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Total Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22	26	1	26	16	416
Total					441

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Record	Total Hours
800.55(k)	1	1	1	20	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past several years, there has been an average of less than one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained. Historically, the Center for Devices and Radiological Health has had very few or no annual responses for this information collection and normally reports one response per year.

FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with one of the three firms whose devices had been detained.

Dated: June 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15995 Filed 6–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety and Security Research—Rapid Methods Development: Availability of Cooperative Agreements; Request for Applications; RFA–FDA–CFSAN–03–1

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) is announcing the availability of approximately $3 million in research funds for fiscal year (FY) 2003. These funds will be used to support collaborative research efforts between CFSAN and scientists, and to complement and accelerate ongoing research in four project areas in order to reduce the incidence of foodborne illness and to ensure the integrity of the nation's food supply (including food additives and dietary supplements) and cosmetics. All awards will be subject to the availability of FY 2003 funds.

DATES: Submit applications by August 11, 2003.

ADDRESSES: Submit completed applications to: Rosemary Springer, Grants Management Specialist, Grants Management Staff (HFA–520), Division of Contracts and Procurement Management, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182, e-mail: rspringe@oc.fda.gov. Hand-carried or commercially delivered applications should be sent to: Food and Drug Administration, 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.

Application forms are available either from Rosemary Springer (see previous paragraph) or on the Internet at http://grants1.nih.gov/grants/funding/phs398/phs398.html. NOTE: Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH). Applications mailed to CSR and not received by FDA in time for orderly processing will be returned to the applicant without consideration. Please note that FDA is unable to receive applications electronically.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Rosemary Springer (see **ADDRESSES** section).

Regarding the programmatic aspects of this notice: John W. Newland, Research Coordinator, Office of Science (HFS–006), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1915, e-mail: john.newland@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to reducing the incidence of foodborne illness to the greatest extent feasible and to protecting the integrity of the nation's food supply. Research in food safety seeks to reduce the incidence of foodborne illness by improving our ability to detect, characterize, and quantitate foodborne pathogens, toxins and chemicals that could jeopardize the safety and security of the food supply, and to find new and improved ways to control these agents. Since 1998, CFSAN has supported multiyear cooperative agreements intended to help achieve the research goals of reducing the incidence of foodborne illness and ensuring the integrity of foods, including food additives and dietary supplements, and cosmetics. This extramural program supports novel collaborative research efforts between CFSAN and scientists, and leverages expertise not found within CFSAN to complement and accelerate ongoing research. Collaborations such as these provide information critical to food safety guidance and policymaking, help address the needs of CFSAN regulatory programs, stimulate fruitful interactions between FDA scientists and those within the greater research community, and benefit the American public.

In continuation of this effort to help enhance the capabilities of the agency, CFSAN is announcing the availability of research funds for FY 2003 to support research in the following four categories: (1) Development of rapid analytical screening methods for the detection of pathogens that are not usually associated with food and foodborne illness at a contamination level of 100 to 10,000 microbial pathogens/gram (g) of food without pregrowth or selective enrichment; (2) development of PCR-based methods for rapid confirmatory identification of pathogens that are not usually associated with food and foodborne illness; (3) development of rapid screening methods capable of detecting a broad range of nontraditional chemical and toxin adulterants; and (4) development of improved equipment, software, procedures, and/or methods for determining radionuclide contamination in foods.

Approximately $3 million will be available in FY 2003. FDA anticipates making awards of $100,000 to $600,000 (direct plus indirect costs) per award. The research efforts supported by these agreements may be up to 3 years in duration, however the total budget amount will not exceed a one-time amount of $600,000 (direct plus indirect costs) per award. The project and budget periods of these awards will be the same. Any application received that exceeds the amount stated previously will not be considered responsive and will be returned to the applicant without being reviewed. The number of agreements funded will depend on the availability of Federal funds to support the projects and on the quality of the applications received. There is no

assurance that awards will be made in each of the four project categories.

FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the ''Healthy People 2010'' objectives, vols. I and II, for $70 per set, ($87.50 foreign) SN/017–000–00550 by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format S/N 017–001–00549–5 for $19 ($23.50 foreign). This publication is also available on the Internet at http://health.gov/healthypeople under ''Publications.''

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

II. Research Goals and Objectives

Proposed projects designed to fulfill the specific objectives of any one of the following requested projects will be considered for funding. Applications may address only one project and its objectives per application. However, applicants may submit more than one application for more than one project. In all of the following projects, CFSAN wants to promote the development of improved techniques for either the detection, control, or analysis of microbiological agents, toxins, and chemicals in food or cosmetics. None of the four projects should involve human research subjects. The projects and their objectives are as follows:

A. Project 1

Develop food security rapid screening analytical methods capable of detecting 100 to 10,000 microbial pathogens/g of food, without pregrowth or selective enrichment and a total elapsed time of less than 6 hours (sample preparation time included). These methods should be immunoassay-based techniques that require a minimum of laboratory-based equipment and are capable of being reproducibly and accurately executed by a trained, bachelor of science-level laboratory technician.

B. Project 2

Develop PCR-based methods for the purpose of providing rapid, confirmatory identification of microbial pathogens that are usually not associated with food and foodborne illness. Methods must work directly in association with the food without pregrowth or selective enrichment, and they must provide a level of sensitivity of 100 organisms or less per g of food sample. The research approach should focus on providing complete protocols. The protocols must describe food sample preparation methods that are to be used in conjunction with the PCR-based identification protocols. Additionally, methods must be compatible with a wide variety of foods or broad food groups. Such groups may be artificially defined by a variety of food properties, such as origin, physical or chemical characteristics, or the method of preparation or manufacture.

C. Project 3

Develop rapid screening methods capable of detecting a broad range of nontraditional chemical and toxin adulterants. These methods should be either kit-based or rely upon a minimum amount of instrumentation, to readily permit rapid deployment and field program use. Methods should rely upon a minimum amount of sample preparation and be usable with broad categories of food, such as high versus low fat content, high versus low water content, or high versus low protein or carbohydrate content. Sensitivities of proposed detection methods should target the acceptable daily intake or the tolerable daily intake for the specific target analytes.

D. Project 4

Develop improved equipment, software, procedures, and/or methods for the determination of radionuclide contamination in foods. Of particular interest are reductions of analysis time, increases in portability, simplified procedures, and improved methodology for rapid determination of alpha- and beta-emitting radionuclides.

III. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The NIH modular grant program does not apply to this FDA program.

B. Eligibility

These cooperative agreements are available to any foreign or domestic, public or private nonprofit entity (including State and local units of government) and any foreign or domestic, for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

Projects may take up to a maximum of 3 years for their completion. The amount of time that will be allocated for the completion of each individually approved and funded research project will be made commensurate with the research approach and methodology being proposed.

IV. Reporting Requirements

Annual Financial Status Reports (FSRs) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer (see **ADDRESSES** section) as indicated by the timeline noted in the Notice of Grant Award. Failure to file the FSR on time may be grounds for suspension or termination of the agreement. Program Progress Reports will be required quarterly and will be due 30 days following each quarter of the applicable budget period. The final quarterly report will serve as the annual report and will be due 90 days after the budget expiration date. The recipient will be advised of the suggested format for the Program Progress Report at the time an award is made. In addition, the principal investigator will be required to present the progress of the study at an annual FDA extramural research review workshop in the Washington, DC metropolitan area. Travel costs for this requirement should be specifically requested by the applicant as part of the application. A final FSR, Program Progress Report, and Invention Statement must be submitted within 90 days after the expiration of the project period, as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis, and written reports will be reviewed and evaluated at least quarterly by the Project Officer. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist

and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. A record of these monitoring activities will be made in an official file specific for each cooperative agreement and may be available to the recipient of the cooperative agreement upon request.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have substantive involvement in the programmatic activities of all the projects funded under this notice and request for applications (RFA). Substantive involvement may include, but is not limited to, the following:

1. FDA will provide guidance and direction with regard to the scientific approach and methodology that may be used by the investigator;
2. FDA will participate with the recipient in determining and executing any: (1) Methodological approaches to be used, (2) procedures and techniques to be performed, (3) sampling plans proposed, (4) interpretation of results, and (5) microorganisms and commodities to be used; and
3. FDA will collaborate with the recipient and have final approval on the experimental protocols. This collaboration may include protocol design, data analysis, interpretation of findings, coauthorship of publications, and the development and filing of patents.

VI. Review Procedure and Criteria

An application must: (1) Be received by the specified due date; (2) be submitted in accordance with sections III.B ''Eligibility,'' VII. ''Submission Requirements,'' and VIII.A ''Submission Instructions'' of this document; (3) not exceed the recommended funding amount stated in section I of this document; (4) address only one of the four project categories identified in this notice and RFA; and (5) bear the original signatures of both the Principal Investigator and the institution's/organization's authorized official. If an application does not comply with these requirements it will be returned to the applicant without further consideration.

Applications meeting the previous requirements will be reviewed, evaluated, and scored for scientific and technical merit by a panel of experts in the subject field of the specific application.

Applications will be evaluated and scored on the following criteria:

1. Soundness of the scientific rationale for the proposed study, appropriateness of the study design, and the study's ability to address all of the objectives of the RFA and thereby protect the health of the American consumer;
2. Availability and adequacy of resources (laboratory facilities, equipment, and support services, e.g., biostatistics computational support, databases, etc.) to perform and achieve the expected results;
3. Qualifications, research experience and training of the principal investigator and other proposed staff to carry out their expected roles under the project; and
4. Whether the budget requested is realistic and reasonable in terms of the scope, aims and duration of the proposed project, including whether it is within budget guidelines, and whether all costs have been adequately justified and fully documented.

Funding recommendations are subject to review by a National Advisory Council for concurrence with the recommendations made. Final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

Applicants must clearly state in their application the project category for which they are applying. There is no assurance that awards will be made in each of the four project categories. If a project category is funded, funding will start with the highest ranked application within that project category, and any additional awards within that project category will be made based on the next highest ranked application. All questions of a technical or scientific nature should be directed to the CFSAN program staff, and all questions of an administrative or financial nature should be directed to the Grants Management Staff. (See the **FOR FURTHER INFORMATION CONTACT** section of this document.)

VII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01) or the original and two copies of PHS 5161–1 (Rev. 7/00) for State and local governments (no appendices) should be delivered to Rosemary Springer (see **ADDRESSES**). State and local governments may choose to use the PHS 398 application form in lieu of PHS 5161–1. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled ''Response to RFA FDA CFSAN–03–1[ ]'' (insert Project # 1, 2, 3, or 4 within the brackets).

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Do not send applications to CSR, NIH. Any application that is sent to NIH, and is then forwarded to FDA and not received in time for orderly processing will be deemed not responsive and returned to the applicant. Applications must be submitted via mail or hand delivery as stated previously. FDA is unable to receive applications electronically. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by the NIH on its applications. NOTE: Applicants must limit the Research Plan sections of their applications to 10 pages and that no appendices should be included with the applications.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01) or PHS 5161–1 (Rev. 7/00) for State and local government applicants. All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address.

The face page of the application should reflect the RFA number, RFA–FDA–CFSAN–03–[ ], (insert Project # 1, 2, 3, or 4 within the brackets).

Data included in the application, if identified by the applicant as trade secret or confidential commercial information, will be given treatment as such to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by

PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001. The requirements requested on Form PHS 5161–1 were approved and assigned OMB control number 0348–0043.

Dated: June 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15964 Filed 6–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0281]

Severe Acute Respiratory Syndrome Diagnostics: Scientific and Regulatory Challenges Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss methods for evaluating new diagnostic tests for severe acute respiratory syndrome (SARS). The purpose of this workshop is to serve as a public forum for interested stakeholders and FDA to consider resources and methods to evaluate SARS diagnostic tests. In addition, the workshop serves as an opportunity to provide mechanisms for public-private partnerships and sharing of both information and resources to facilitate evaluation and safe use of new diagnostic tests.

Date and Time: The public workshop will be held on July 14, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the DoubleTree Rockville Hotel and Executive Meeting Center (*http://www.doubletreerockville.com*), 1750 Rockville Pike, Rockville, MD 20852, 301–468–1100, FAX: 301–468–0163. The hotel may be reached by Metro using the Twinbrook station on the red line. Submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: *FDADockets@oc.fda.gov*. Online registration, additional information about the meeting, and directions to the facility are available on the Internet at: *http://www.fda.gov/cdrh/meetings/071403.html*.

Contact Person: Cynthia Benson, Center for Devices and Radiological Health (HFZ–3), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–7989, e-mail: *cmh@cdrh.fda.gov*.

Agenda: At the workshop, FDA will receive questions and comments from stakeholders likely to be affected by FDA policies or procedures regarding SARS diagnostic tests. Stakeholders include, but are not limited to, medical device product manufacturers, members of the academic and clinical communities, and consumer and patient advocacy groups.

Registration: Preregistration is required by July 7, 2003, and will be accepted on a first-come, first-served basis; however, notwithstanding attendance at the workshop, interested persons are encouraged to provide comments (see the *Request for Comments* section of this document). Please register online at *http://www.fda.gov/cdrh/meetings/071403.html*. Persons without Internet access may call 1–888–203–6161 to register. To accommodate overnight attendees, a limited number of reserved rooms are available by calling the DoubleTree Rockville Hotel and Conference Center (see the **ADDRESSES** section of this document). Please register with the hotel by June 30, 2003. FDA is pleased to provide the opportunity for interested persons to listen from a remote location to the live proceedings of the workshop. In order to ensure that a sufficient number of call-in lines are available, please register to listen to the meeting at *http://www.fda.gov/cdrh/meetings/071403.html*. Persons without Internet access may call 1–888–203–6161 to register. Please register by July 7, 2003. FDA will provide audio conference participants the opportunity for comments and questions by fax (fax number to be provided at the workshop).

If you need special accommodations due to a disability, please contact Shirley Meeks at 301–594–1283 at least 7 days in advance.

Request for Comments: Regardless of attendance at the workshop, interested persons may submit written or electronic comments to the Division of Dockets Management (see the *Addresses* section of this document). Submit two paper copies of any mailed comments. Individuals may submit one paper copy. Identify comments with the docket number found in brackets in the heading of this document. The comments that FDA receives will be made available at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Transcripts: Following the workshop, transcripts will be available for review at the Division of Dockets Management (see the **ADDRESSES** section of this document).

SUPPLEMENTARY INFORMATION: The objectives of the workshop are to discuss methods for evaluating new SARS assays for clinical and public health use and to develop information on availability and access to control materials, reagents, and specimens needed for development and qualification of SARS diagnostic assays. FDA hopes to address unique issues related to the evaluation of nucleic acid amplification, direct antigen, and serologic assays. FDA also wishes to promote partnerships among government, industry, health care providers, and the clinical laboratory community that would facilitate the development of new SARS diagnostic assays through sharing of information and resources.

Dated: June 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16232 Filed 6–23–03; 3:07 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Transgenic Mouse Model of Human B-cell Neoplasia Based on Myc Insertion into IgH (IgH-Myc$^{\mu}$)

Siegfried Janz, M.D. (NCI)
DHHS Reference No. E–160–2003/0
Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Some types of cancers are caused by the translocation of genes between two different chromosomes. When a translocation occurs near a highly active promoter, uncontrolled cell growth can be the result if the translocated chromosome piece contains an oncogene. For example, in some types of B cell neoplasias the *Myc* oncogene from chromosome 8 is translocated into the highly transcribed region of the *IgH* locus in chromosome 14.

This invention is a transgenic mouse model that mimics the t(8;14)(q24;q32) translocation commonly found in human sporadic Burkitt's Lymphoma. Specifically, this model has the *Myc* gene inserted into the *IgH* locus just upstream of the constant region Cm.

Since the *Myc* translocation can occur at various regions within the *IgH* locus, several mouse models of *Myc-IgH* translocations have been developed. Two of these, the IgH-Myc$^{E\mu}$IgH-Myc$^{C\alpha}$, have been made available previously. The present specific translocation (IgH-Myc$^{C\mu}$) animal model will deepen the understanding of the pathogenesis of B-cell neoplasia, uncover new targets for treatment, and serve as a pre-clinical model for innovative intervention approaches.

Inducing a T-Cell Response With Recombinant Pestivirus Replicons or Recombinant Pestivirus Replicon-Transfected Dendritic Cells

Barbara Rehermann *et al.* (NIDDK)
Serial No. 60/462,165 filed 11 Apr 2003 (DHHS Reference No. E–098–2003); Serial No. 60/463,097 filed 14 Apr 2003 (DHHS Reference No. E–230–2003),
Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Cancer and diseases such as Hepatitis C Virus (HCV), Human Immunodeficiency Virus (HIV), Respiratory Syncytial Virus (RSV), Mycobacterium tuberculosis, Plasmodium falciparum infection, are not effectively prevented by the humoral immune response initiated by standard antigen vaccinations. The neutralizing antibody response created by these types of vaccinations is not effective enough to prevent the progression of the disease. In these cases, a cellular, T-Cell mediated immune response is a much more effective vaccination strategy.

This invention describes the use of recombinant pestivirus replicons or recombinant pestivirus replicon transfected dendritic cells to induce and/or enhance a T-cell mediated immune response by exploiting the cross-priming ability of endogenous antigen-presenting cells (APCs). These recombinant pestivirus replicons contain an antigen specific to a disease requiring a T-cell response. This antigen is presented to APCs in the lymphatic system by the apoptotic transfected dendritic cells that initiate cross-priming.

This invention generates a stronger immune response than current dendritic cell/APC methods. Because dendritic cells transfected with the recombinant pestivirus replicons survive longer than dendritic cells transfected with other viral replicons, more transfected dendritic cells enter the lymphatic system and undergo apoptosis there. This results in a greater amount of cross-priming and a stronger T-Cell response.

Inhibition of Ubiquitin-Mediated Process by UBA Domain Peptides

Stan Lipkowitz *et al.* (NCI)
Serial No. 60/464,658 filed 23 Apr 2003 (DHHS Reference No. E–324–2002/0)
Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Ubiquitin is a protein tag that targets cellular proteins for degradation by the multicatalytic protease, the proteasome. A three-component system of ubiquitin activating enzyme (E1), ubiquitin conjugating enzyme (E2), and ubiquitin protein ligase (E3) promotes the covalent attachment of ubiquitin to a protein to be degraded. Of the three components, the E3 component confers the specificity to the ubiquitination.

This invention describes isolated peptides comprising an ubiquitin-associated (UBA) domain that inhibits ubiquitin-mediated protein degradation by binding ubiquitin and polyubiquitin. The series of UBA domain peptides contain a structurally conserved core and a characteristic set of three alpha helices. Specifically, these studies centered on the UBA domain of the proto-oncogene, cbl-b. Expression of the cbl-b UBA-domain peptide in a cell inhibits the degradation of epithelial growth factor (EGFR), murine double minute 2 (Mdm2), and seven in absentia homologue-1 (Siah-1).

UBA domain peptides will be useful in treating conditions associated with an unusually high level of an ubiquitin-mediated process. Defects in the functioning of the ubiquitin/proteasome system can have severe consequences on biological homeostasis, causing a multitude of pathological conditions. The most obvious treatment options using the UBA-domain peptides could be for cancer, developmental disorders, and inflammatory conditions. In addition, UBA domain peptides can be used to inhibit ubiquitin mediated processes to further the understanding of the cell biological and development roles of these processes.

Use of Discoidin Domain Receptor 1 (DDR1) and Agents That Affect the DDR1/Collagen Pathway

Teizo Yoshimura (NCI)
PCT/US02/39793 filed 11 Dec 2002 (DHHS Reference No. E–083–2002/2–PCT–01),
Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Dendritic cells (DCs) are pivotal antigen-presenting cells for initiation of an immune response. Indeed, dendritic cells provide the basis for the production of an effective immune response to a vaccine, particularly for antigens wherein conventional vaccination is inadequate. DCs are also important in the production on an immune response to tumor antigens.

The present invention discloses methods of using the receptor tyrosine kinase discoidin domain receptor 1 (DDR1) to facilitate the maturation/differentiation of DCs or macrophages. Activating agents of DDR1 may be useful in the induction of a highly potent, mature DCs or highly differentiated macrophages from DC precursors, such as monocytes. Use of this method may enhance the antigen presenting capabilities of the immune system, leading to a more effective overall immune response.

This research is further described in Kamohara *et al., FASEB J.* 10.1096/fj.01–0359fje (published online October 15, 2001) and Matsuyama *et al., FASEB J.* 10.1096/fj.02–0320fje (published online May 8, 2003).

Production of Adeno-Associated Viruses in Insect Cells

Robert Kotin *et al.* (NHLBI)
Serial No. 09/986,618 filed 09 Nov 2001 (DHHS Reference No. E–325–2001/0); Serial No. 10/216,870 filed 13 Aug 2002 (DHHS Reference No. E–325–2001/1); PCT/US02/35829 filed 08 Nov 2002 (DHHS Reference No. E–325–2001/2),
Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Currently, adeno-associated virus (AAV) is being developed for gene therapy applications. This virus type presents several advantages over alternate vectors for therapeutic gene

delivery. AAV is not considered pathogenic and transduces stably dividing and non-dividing cells; and shows good serotype specificity to various cell types for targeted gene delivery.

This invention is a highly scalable AAV vector production method in insect cells. This production method produces virus particles much more efficiently than the standard mammalian cell culture system. For example, to produce 10^{15} rAAV particles may require 5,000 175cm^2 flasks. With this new production method, 10 to 50 liters of Sf9 insect cells are required to produce the same quantity of AAV particles. This is a striking improvement in production efficiency. In addition, all serotypes of AAV can be produced, with the respective AAV serotype vectors available for the immediate scale up of AAV production.

This invention coupled with NIH invention E–308–2001, titled ''Scalable Purification of AAV2, AAV4 or AAV5 Using Ion-Exchange Chromatography,'' gives a licensee a highly scalable production and purification system for efficient clinical trial development and commercialization of AAV.

Scalable Purification of AAV2, AAV4 or AAV5 Using Ion-Exchange Chromatography

Nikola Kaludov (NIDCR)
John Chiorini (NIDCR)
Serial No. 60/381,180 filed 17 May 2002; Serial No. 10/166,347 filed 17 May 2003 (DHHS Reference No. E–308–2001/0),
Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Adeno-associated viruses (AAVs) constitute, as a group, the vehicle of choice for gene therapy because of several attractive features. Among others, AAVs are less pathogenic than other viruses, and they can be used for the long-term expression of therapeutic genes.

This invention describes a simple ion-exchange (HPLC) methodology to purify different AAV serotypes. The protocol, which can be readily scaled up, details the efficient concentration of fully infective AAV particles, and is applicable to a number of promising serotypes for which efficient purification methodologies are currently lacking. Significantly, the method consistently produces higher infectivity per particle ratios than standard methods.

This invention, coupled with NIH invention E–325–2001, entitled ''Highly Scalable Production of AAV in Insect Cells,'' would give a licensee a purification system that can be readily scaled-up to efficiently produce recombinant adeno-associated viruses for clinical trial development.

This work is further described in Kaludov *et al.*, Hum. Gene Ther. (2002) 13:1235–43.

Dated: June 16, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–15971 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Oligodeoxyribonucleotides Comprising O^6-Benzylguanine and Their Use

Robert Moschel *et al.* (NCI)
U.S. Patent 6,060,458 issued 09 May 2000,
Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The DNA repair protein, O^6-alkylguanine-DNA alkyltransferase (alkyltransferase) is the primary source of tumor cell resistance to alkylating chemotherapeutic drugs that modify the O^6-position of DNA guanine residues. Inactivators of alkyltransferase are currently in use to enhance chemotherapy by these alkylating drugs. The prototype inactivator, O^6-benzylguanine is currently in Phase II and III clinical trials as an adjuvant to improve chemotherapy. Although O^6-benzylguanine is a promising inactivator, it is not an ideal drug since it is only sparingly soluble in water and it is not effective in inactivating some mutant alkyltransferase proteins that could possibly be produced after repeated chemotherapy cycles.

Oligodeoxyribonucleotides containing O^6-benzylguanine residues represent another class of alkyltransferase inactivators. They are extremely water soluble alkyltransferase inactivators that can efficiently inactivate the alkyltransferase protein at much lower concentrations than O^6-benzylguanine. In addition, oligodeoxyribonucleotides containing O^6-benzylguanine are effective in activating several mutant alkyltransferase proteins that are highly resistant to inactivation by O^6-benzylguanine. For example, oligodeoxyribonucleotides between 7 and 11 nucleotides in length containing multiple O^6-benzylguanines are effective in inactivating several alkyltransferase molecules per oligonucleotide molecule at 300 fold lower concentrations than O^6-benzylguanine. These same substrates are also effective inactivators of mutant alkyltransferase molecules that are resistant to inactivation by O^6-benzylguanine. In addition, positioning O^6-benzylguanine near the 3′-or 5′-terminus of these oligodeoxyribonucleotides improves their resistance to degradation by cellular nuclease proteins. Therefore, oligodeoxyribonucleotides containing multiple O^6-benzylguanine residues may be more effective chemotherapy adjuvants than O^6-benzylguanine as the free base.

Imidazoacridones with Anti-Tumor Activity

Christophe Michejda *et al.* (NCI) DHHS Reference No. E–289–1999 (and related U.S. and foreign patents/applications) and U.S. Patent 6,541,483 issued 01 April 2002 (and related U.S. and foreign patents/applications),
Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The present invention relates to novel bifunctional molecules with anti-tumor activity. These agents are composed of an imidazoacridone moiety linked by a nitrogen containing aliphatic chain of various length and rigidity to another aromatic ring system capable of intercalation to DNA.

Previous studies on related symmetrical bis-imidazoacridones revealed that only one planar imidazoacridone moiety intercalates into DNA. The second aromatic moiety, which is crucial for biological activity, along with the linker resides in DNA minor groove, and is believed to interact with DNA-binding proteins (most likely, transcription factors and /or repair proteins). The symmetrical bis-imidazoacridones arrest the growth of sensitive cancers (especially colon cancers) but do not kill the tumors. It was hypothesized that the growth arrest was due to the inability of the affected tumor cells to repair DNA damage caused by the compounds. Remarkably, bis-imidazoacridones are very well tolerated, are very tissue selective and do not appear to damage normal tissues.

Since the binding of the symmetrical bis-imidazoacridones to DNA was unsymmetrical, the inventors have developed unsymmetrical compounds in which one imidazoacridone moieties was replaced by other intercalating groups, with the expectation that this would enhance biological activity while retaining the remarkable tissue selectivity and low systemic toxicity. The new compounds contain intercalating moieties such as 3-chloro-7-methoxyacridine or naphthalimide along with the original imidazoacridones.

These new compounds, especially those containing naphthalimide moiety, are extremely cytotoxic against variety of tumor cells in vitro (IC50 at low nanomolar range) and kill tumor cells by inducing apoptosis. In vivo, in nude mice xenografted with human tumors, the compounds significantly inhibited the growth of such tumors as colon tumor HCT116 and Colo205 as well pancreatic tumors (lines 6.03 and 10.05 freshly established from a patient). These compounds are extremely potent agents against hepatocellular carcinoma as evidenced by their ability to eradicate liver cancer in an orthotopic liver cancer model in rats. The primary molecular target of these very potent compounds is the inhibition of both topoisomerase I and II, although other targets may be important as well. Remarkably, no toxicity was observed at the therapeutic doses. These are among the most potent agents known against cancers of the GI tract and appear to be tolerated very well.

Dated: June 16, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–15972 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Zap70 Protein Expression as a Marker for Chronic Lymphocytic Leukemia (CLL)

Louis M. Staudt *et al.* (NCI)

Serial No. 60/375,966 filed 25 Apr 2002 and Serial No. 10/309,548 filed 03 Dec 2002

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov.*

The presence or absence of somatic mutations in the expressed immunoglobulin heavy chain variable regions (IgVH) of chronic lymphocytic leukemia (CLL) cells provides prognostic information. Patients whose leukemic cells express unmutated IgVH regions (Ig-unmutated CLL) often have progressive disease whereas patients whose leukemic cells express mutated IgVH regions (Ig-mutated CLL) more often have an indolent disease. Given the difficulty in performing IgVH sequencing in a routine diagnostic laboratory, this prognostic distinction is currently unavailable to most patients.

The present invention relates to the discovery that ZAP–70 expression also distinguishes the two CLL subtypes. Ig-unmutated CLL expressed ZAP–70 5.54-fold more highly than Ig-mutated CLL. ZAP–70 expression correctly predicted IgVH mutation status in 93% of patients, and ZAP–70 expression and IgVH mutation status were comparable in their ability to predict time to treatment requirement following diagnosis. Clinically applicable RNA and protein-based assays for ZAP–70 expression have been developed. These assays would yield important prognostic information for CLL patients.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

ABCA13 Nucleic Acids and Proteins, and Uses Thereof

Michael Dean *et al.* (NCI)

DHHS Reference No. E–304–2000/0 filed August 20, 2003

Licensing Contact: Catherine Joyce; 301/435–5031; e-mail: *joycec@mail.nih.gov.*

This technology relates to the identification of a novel gene in the ABC (ATP-binding cassette transporter) gene superfamily, the ABCA13 gene. The ABC proteins are involved in extra- and intracellular membrane transport of various substrates such as ions, amino acids, peptides, sugars, vitamins, or steroid hormones and at least 14 members of the ABC gene superfamily have been described as associated with human disease. ABCA13 has high similarity with other ABCA subfamily genes that are associated with human inherited diseases. This includes ABCA1, the gene responsible for the cholesterol transport disorders Tangier disease and familial hypoalphalipoproteinemia, and ABCA4, the gene responsible for several retinal degeneration disorders. The ABCA13 gene is expressed in trachea, testes, and bone marrow. The ABCA13 gene maps to chromosome 7p12.3, a region that contains an inherited disorder affecting the pancreas and bone marrow (Shwachman-Diamond syndrome) as well as a locus involved in T-cell tumor invasion and metastasis (INM7), and therefore is a positional candidate for these disorders.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: June 16, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–15973 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 14, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, PhD, Chief, Extramural Project Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Wilco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Bethesda, MD 20892–7003, (301) 443–2860, *ehayunga@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA–AA03–008—College Drinking.

Date: July 17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 435–5337.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15967 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunology Training Grant Applications.

Date: July 10, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Bethesda, MD 20892–7616. (301) 402–5658, *gbansal@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15968 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: July 21, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700-B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, (301) 496–2550, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15969 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Electron Microscopy Shared Instrumentation Grants.
Date: June 30, 2003.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Mental Health Genetics Study.
Date: July 1, 2003.
Time: 8 AM to 9 AM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Virology.
Date: July 7–8, 2003.
Time: 8 AM to 5:50 PM.
Agenda: To review and evaluate grant applications.
Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21201.
Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Basic Research in Interstitial Cystitis, RFA DK03–010.
Date: July 9–10, 2003.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: M. James Scherbenske, PhD, Scientific Review Administrator, MSD IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–435–1173.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Molecular & Cellular Biophysics/Biophysics Collaborative Access Team.
Date: July 9–11, 2003.
Time: 5 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Argonne Guest House, 9700 Cass Ave., Bldg. 460, Conference Rm. B, Argonne, IL 60439.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, 301–435–1726, *lomontan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Endocrinology, Metabolism, Nutrition & Reproductive Sciences.
Date: July 9–10, 2003.
Time: 7 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Cardiovascular System and Pharmacology.
Date: July 10–11, 2003.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, 301–435–1195.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS Discovery and Development of Therapeutics Study Section.
Date: July 10–11, 2003.
Time: 8 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Mayflower, 1127 Connecticut Ave., NW., Washington, DC 20036.
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, 301–435–1168.

Name of Committee: Biology of Development and Aging Integrated Review Group. International and Cooperative Projects 1 Study Section. FIRCA Applications.
Date: July 10–11, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont, Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 435–1019. *warrens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Parasite Vectors.
Date: July 10–11, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 F05 (50) S: Cellular and Molecular Imaging Methods (RFA–EB–03–003).
Date: July 10–11, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024. *rodewalr@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group NeuroAIDS and Other End-organ Diseases Study Section.
Date: July 10–11, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Abraham P. Bautista, MS, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Maintenance of Long-Term Behavioral Change.
Date: July 10–11, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7759, Bethesda, MD 20892, (301) 435–3554. *shirleym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine Study Section.
Date: July 10, 2003.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2102 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel T15 and K01 Research Ethics Study Section.
Date: July 10, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 3166 MSC 7770, Bethesda, MD 20892, (301) 435–1017.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health Education & Disease Management.
Date: July 10–11, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Claire E. Gutkin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Applications: Developmental Disabilities, Communication and Science Education.
Date: July 10–11, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Bio-behavioral Mechanisms of Emotion, Stress, and Health.
Date: July 10, 2003.
Time: 2 p.m. to 2:45 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–M 02S: Tissue Engineering.
Date: July 10, 2003.
Time: 3 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Psycholinguistics.
Date: July 10, 2003.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel Coagulation and Thrombosis.
Date: July 11, 2003.
Time: 8:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Therapy for Vascular Function.
Date: July 11, 2003.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue NW., Washington, DC 20007.
Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room. 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Center for Scientific Review Special Emphasis Panel Polymerosomes.
Date: July 11, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room. 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 AARR (12) SBIR Teleconference.
Date: July 11, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–M 53R: PAR–03–032: Prosthesis Bioengineering Research Partnerships.
Date: July 11, 2003.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts in Biophysics and Chemistry.
Date: July 14, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

Name of Committee: Center for Scientific Review Special Emphasis Panel HEPATITIS C: Natural History, Pathogenesis, Therapy and Prevention R21s.
Date: July 14, 2003.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington Hotel, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center

for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel Brain Disorders and Clinical Neuroscience Fellowship Review.

Date: July 14–15, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders & Clinical Neuroscience/SSS S10/SBIR.

Date: July 14–15, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Renal Fibrogenesis.

Date: July 14, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: June 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15970 Filed 6–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Fund Availability

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of fund availability—tribal courts and Courts of Indian Offenses.

SUMMARY: The Bureau of Indian Affairs (BIA) is announcing that $5.5 million is available for funding to tribal courts (including CFR courts) that assume responsibility of adjudicating matters under 25 CFR part 115, for outsourcing with tribal entities or organizations to provide technical assistance to prospective tribal court grantees, and for development of a tribal court infrastructure, where necessary. Under part 115, tribal courts are responsible for appointing guardians, determining competency, awarding child support from Individual Indian Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets. Funds will be awarded under the discretionary authority of section 103 of Public Law 93–638.

DATES: Applications are due July 25, 2003.

ADDRESSES: Send applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 513–7629.

SUPPLEMENTARY INFORMATION: The authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, 25 U.S.C. 13, which authorizes appropriations for ''Indian judges'' (See *Tillett* v. *Hodel,* 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox,* 13 Sawy. 349, 35 F. 575 (D.Ore. 1888)), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

There are approximately 225 tribes that contract or compact with the Bureau of Indian Affairs to perform the Secretary's adjudicatory function and 23 Courts of Indian Offenses (also known as CFR courts). It is expected that 15 tribal entities will choose to assume this responsibility. The $5.5 million is earmarked to assist tribal courts to perform the increased responsibilities required by 25 CFR part 115 and to provide technical assistance to tribal courts as necessary. Funds will be distributed to tribal courts based on the cost per case as determined by the estimated number of prospective Supervised IIM Account cases submitted by all qualified applicants. Approximately 15 percent of the total amount available in this Notice of Fund Availability (NOFA) will be with tribes or tribal entities to provide technical assistance and code development for tribal courts as needed.

Program Description

Qualified tribal applicants that assume responsibility over Supervised IIM Accounts under 25 CFR 115 are eligible to receive funding under this NOFA. Applicants will consider the following sections of part 115 when responding to this NOFA: 115.001, 115.002, 115,100, 115.102, 115.104, 115.107, 115.400, 115.401, 115.413, 115.420, 115.421, 115.425, 115.430, 115.600, 115.601, 115.605, 115.701.

Note: An electronic copy of this document may be downloaded from the Office of the Federal Register's home page at: *http://www.access.gpo.gov/nara.*

Tribes seeking to apply will be responsible for having codes or ordinances in place; appointing guardians; determining competency; awarding child support from Individual Indian Money (IIM) accounts; determining paternity; sanctioning adoptions, marriages, and divorces; making presumptions of death; and adjudicating claims involving trust assets as prescribed in the sections cited above. Funds provided under this NOFA are specifically made available to tribal courts that assume additional responsibility under 25 CFR 115 to adjudicate Supervised IIM Accounts and are not intended to be used as general operating funds for a judiciary. Tribes that received grant funds under the FY 2002 NOFA must have submitted all reports required under the grant to qualify for grant funds under this FY 2003 NOFA.

Definitions

Case Disposed Of. A case in which a final decision is rendered by the court even though the court may retain jurisdiction subsequently to review the matter upon submission of additional relevant facts by an interested party.

Qualified Applicant. A qualified applicant is a tribal government submitting an application for funding for a tribal court meeting the following threshold requirements:

(1) The tribal government has enacted the codes necessary for the tribal justice system to carry out its responsibility under 25 CFR 115.

(2) The tribal court has adopted and made accessible court rules setting forth the procedures to adjudicate these cases.

(3) Tribal court personnel have been trained to process these cases and the

court is staffed to fulfill the tribal legislative mandate.

(4) The tribal justice system is one that serves as the judicial component of a tribal government which is federally recognized by the United States Government.

A tribal court will be considered to be a qualified applicant if it received a Supervised IIM Account grant in FY 2002, there has been no substantive change in the court structure, and the tribe has filed all reports required under the grant. If these conditions have been met, certification will not be necessary. The tribal court only needs to state that there has been no substantive change in status as a grantee from the prior fiscal year.

Tribal Courts. As used in this NOFA, reference to tribal courts includes Courts of Indian Offenses (CFR courts) established by the Department of the Interior under Title 25 part 11 (2001-edition) of the Code of Federal Regulations.

Application Process

(1) The tribal government, unless considered to be pre-qualified, will provide a certification that the threshold requirements are met, in response to Item #11 in SF–424 (*See* attached form). In the event that the tribe wants to participate in the program, but is unable to provide this certification, the tribe must send a letter expressing intent to participate and requesting technical assistance, to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, phone 202–513–7629, fax 202–208–5113.

(2) In Item #11 of SF 424, the tribe will indicate the number of Supervised IIM Accounts that will be disposed of during FY 2003.

(3) Funds will be awarded under the discretionary authority of section 103 of Public Law 93–638 (25 U.S.C. 450h).

Application Form

Tribes must fill out and submit the form entitled ''Application for Federal Assistance,'' labeled with the Office of Management and Budget (OMB) Approval No. 0348–0043 (Standard Form 424, Rev. 7–97). The form is attached to this notice. The form may also be downloaded from the Internet at *http://www.gsa.gov.*

Deadline

Applications are due 30 calendar days after the publication date of this NOFA and must be either received or postmarked by midnight on the deadline date. Mail applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240; or fax to 202–208–5113. Applicants may also hand deliver applications to the address indicated above by close-of-business (5 p.m. e.s.t.) on the deadline date. Additionally, applications will be accepted by facsimile until the close-of-business (5 p.m. e.s.t.) on the deadline date, provided the original application is submitted as supporting documentation postmarked by midnight the day after the due date. No applications can be transmitted by e-mail (electronic mail). Applicants are responsible for ensuring proper delivery of the application and are encouraged to contact Ralph Gonzales at 202–513–7629 to confirm its receipt.

Dated: June 6, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310–4J–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes **If "Yes," attach an explanation.** ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 03–15997 Filed 6–24–03; 8:45 am]

BILLING CODE 4310–4J–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–03–1210–PG–24–1A]

Notice of Resource Advisory Council Meetings and Field Tour

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: the first meeting will be held July 15–16, 2003, at the Westin Hotel, 1684 West Hwy 40, Vernal, UT, beginning at 8 a.m. on July 15 and concluding at 2 p.m. on July 16. A public comment period will begin at 1:30 p.m. and conclude at 2 p.m. on July 16. Written comments may be sent to the bureau of Land management address listed below. A follow-up meeting is scheduled for September 9–10, at the Airport Hilton Hotel, 5151 Wiley Post Way, Salt Lake City, Utah. the meeting will begin at 8 a.m. on September 9 and conclude at noon on September 10.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt lake City, Utah, 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: On July 15, a filed trip is planned south of Vernal. Discussion points and focus will be oil and gas operations; white-tailed prairie dog management; black footed ferrets; raptor management in the context of oil and gas development; recreation (sightseeing, interpretation, warm water game fishing); OHV use; drought; Wildland Urban Interface and hazard reduction. On July 16, a working meeting will be held to discuss the reports from the raptor, OHV, and the San Rafael subgroups; a presentation, along with a discussion, on the Sustainable Working landscapes, Initiative; and an overview of the National Fire Plan along with fire updates.

On September 9–10, 2003, the Council will provide their advice and recommendations regarding the preliminary draft Sustainable Working Landscape policy.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: June 19, 2003.

Gene Terland,

Assoc. State Director.

[FR Doc. 03–15990 Filed 6–24–03; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Rocky Mountain National Park

SUMMARY: This notice announces a revision to the boundary of Rocky Mountain National park to include one parcel of land owned by Estes Valley Land Trust. The National Park Service has determined that this boundary revision is necessary for the preservation and protection of the national park.

DATES: The effective date of this Order is June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Superintendent, Rocky Mountain National Park, Estes, Colorado 80517–8397 or by telephone at 970–568–1399.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 4601–9(c)(1) authorizes the Secretary of the Interior to make this boundary revision. This action will add one parcel of land comprised of 63.38 acres to Rocky Mountain National Park in Larimer County, Colorado.

The above parcel is depicted as tract number 10–110 on land acquisition status map segment 10, having drawing number 121–92,002. This map is on file at the National Park Service, Land Resources Program Center, Intermountain Region, and at the Office of the Superintendent, Rocky Mountain National Park.

Dated: November 26, 2002.

Karen P. Wade,

Regional Director, Intermountain Region, National Park Service.

Editorial Note: This document was received at the Office of the Federal Register on June 19, 2003.

[FR Doc. 03–15978 Filed 6–24–03; 8:45 am]

BILLING CODE 4310–08–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Draft Chesapeake Bay Special Resource Study/EIS Availability

AGENCY: National Park Service, Interior.

ACTION: Availability of draft Chesapeake Bay Special Resource Study/ Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft Chesapeake Bay Special Resource Study and Environmental Impact Statement (DEIS).

The Fiscal Year 1999 appropriations bill for the Department of the Interior and related agencies included direction to the National Park Service to conduct a Special Resource Study to: (a) Examine whether having additional Chesapeake Bay resources within the National Park System would make sense and would advance partnership efforts to conserve and celebrate the Chesapeake Bay; (b) define whether there are concepts or ways that areas of the Bay might fit appropriately within the diverse National Park System; and (c) make recommendations to Congress regarding these findings. The draft Chesapeake Bay Special Resource Study/DEIS outlines a no-action alternative and four conceptual alternatives for how the Chesapeake Bay might be represented within the National Park System.

DATES: There will be a 60-day public review period for comments on this document. Comments on the DEIS may be submitted but be received no later than 60 days after publication of this notice in the **Federal Register**. Public open houses for information about, or to make contract on, the DEIS will be announced in Chesapeake Bay region media, a newsletter and the study Web site when they are scheduled. Information about meeting times and locations will be available by contacting the NPS Chesapeake Bay Program Office at 800 YOUR BAY (968–7229) or visiting the study Web site at: *www.chesapeakestudy.org.* Comments may also be submitted in writing or electronically via the study Web site (*see* **ADDRESS** below).

ADDRESSES: Copies of the DEIS are available upon request by writing to NPS Chesapeake Bay Program Office, 410 Severn Avenue, Suite 109, Annapolis MD 21403, by phone at 800 YOUR BAY (968–7229), or by e-mail to *cmueller@chesapeakebay.net.* A

downloadable on-line version of the document is available at: *www.chesapeakestudy.org.*

FOR FURTHER INFORMATION CONTACT: Director, NPS Chesapeake Bay Program Office, 410 Severn Avenue, Suite 109, Annapolis MD, 21403, or 800 YOUR BAY (968–7229).

It is National Park Service practice to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 9, 2003.

Dale Ditmanson,

Acting Director, Northeast Region.

[FR Doc. 03–15976 Filed 6–24–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplemental Environmental Impact Statement General Management Plan Amendment for a Visitor Learning Center Great Basin National Park White Pine County, Nevada; Notice of Approval of Record of Decision

Summary: Pursuant to ''102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Supplemental Environmental Impact Statement (SEIS) and General Management Plan Amendment for Great Basin National Park. The no-action period was initiated April 4, 2003, with the U.S. Environmental Protection Agency's Federal Register notification of the filing of the Final SEIS.

Decision: As soon as practical the National Park Service will begin to implement the amended General Management Plan described as the *Proposed Action (Alternative 2)* contained in the Final SEIS. This alternative was deemed to be the Aenvironmentally preferred'' alternative. This course of action and two alternatives were identified and analyzed in the Final and Draft SEIS (the latter was distributed in March-April, 2002). The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified.

Alternatives and Review Comments: The selected action (described as *Alternative 2* in the SEIS) modifies the 1993 General Management Plan and allows for constructing a park Visitor Learning Center on a previously disturbed 80 acre site located at the outskirts of the town of Baker, Nevada (rather than on an undisturbed site located within the park approximately 6 miles outside the town of Baker). In addition to a no-action alternative developed to provide a comparative baseline for assessing environmental consequences, a third alternative of not constructing a new Visitor Learning Center and relying on the Lehman Caves Visitor Center as the only orientation facility was also evaluated.

From the initial scoping period in December 1999 through the opportunity to review and comment on the Draft SEIS (ending in June 2002), a total of nine public comment letters were received. Only minor points were raised, and no respondents objected to the proposed amendment. The Final SEIS was released in April 2003; no responses were received during the no-action period. Consultations with interested Tribes, the Environmental Protection Agency, and the state of Nevada resulted in no substantive changes to the proposal.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Great Basin National Park, Baker, Nevada, 89311; or via telephone request at (775) 234–7331.

Dated: May 29, 2003.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–15979 Filed 6–24–03; 8:45 am]

BILLING CODE 4312–FP–P

DEPARTMENT OF THE INTERIOR

National Park Service

Statue of Liberty NM and Ellis Island, New York and New Jersey; Notice of Availability of Draft Environmental Impact Statement

In accordance with the National Environment Policy Act of 1969 (Pub. L. 91–109 section 102(c)), the National Park Service (NPS) has prepared a Draft Environmental Impact Statement (DEIS) for Ellis Island located in upper New York Harbor, within the States of New Jersey and New York. The purpose of the DEIS is to assess the environmental consequences of alternative management strategies for the rehabilitation and adaptive reuse of 30 abandoned and deteriorating buildings on Ellis Island and limited service and emergency access that is described in a Development Concept Plan (DCP) that forms the basis for the DEIS.

Copies of the DCP/DEIS are available in hard copy or Compact Disk and may be obtained by contacting the Superintendent, Statue of Liberty NM and Ellis Island, Ellis Island Receiving Office, Jersey City, NJ 07305. The DCP/DEIS may also be accessed via the park's Web site at *www.nps.gov/elis.*

The NPS will also hold informational meetings in New Jersey and Manhattan to present the management strategies and to provide the public with an opportunity to comment.

Meeting times and locations will be posted in area newspapers and on the park's Web site noted above.

Written comments may be sent to the Superintendent until August 8, 2003. After public and interagency review of the draft document comments will be considered, and a Final EIS and Record of Decision shall be prepared.

Dated: May 16, 2003.

Robert W. McIntosh, Jr.,

Associate Regional Director, Planning and Partnerships, Northeast Region, National Park Service.

[FR Doc. 03–15977 Filed 6–24–03; 8:45 am]

BILLING CODE 4310–6E–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 7, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–

371–6447. Written or faxed comments should be submitted by July 10, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Arkansas

Greene County

Paragould Downtown Commercial Historic District, Roughly bounded by 3rd Ave., Kingshighway, 3½ St., and W. Highland St., Paragould, 03000646

Colorado

Mesa County

Colorado National Monument Visitor Center Complex, Colorado National Monument, Fruita, 03000647

Kentucky

Ohio County

Monroe, Bill, Farm, ≤S of KY 62, 1.5 mi. N of Western Kentucky Parkway, and 2.5 mi. E of Green River Parkway, Rosine, 03000648

Maryland

Harford County

Berkley Crossroads Historic District, Berkley Road and Castleton Rd., Darlington, 03000649

Missouri

Cape Girardeau County

Broadway and North Fountain Street Historic District, (Cape Girardeau, Missouri MPS) 320–400 Broadway and 221 North Fountain St., Cape Girardeau, 03000654

Himmelberger and Harrison Building, (Cape Girardeau, Missouri MPS) 400 Broadway, Cape Girardeau, 03000653

Howell County

Courthouse Square Historic District, (West Plains, Missouri MPS) Roughly bounded by Broadway, Grove St., Court Sq. and Washington Ave., West Plains, 03000651

Polk County

Bolivar Public Library, 120 E. Jackson St., Bolivar, 03000652

St. Louis Independent City

Grand—Leader (Stix, Baer & Fuller Dry Goods Co.) Building, 601 Washington Ave., St. Louis (Independent City), 03000650

New Jersey

Cape May County

Fire Control Tower No. 23, Sunset Boulevard, Lower Township, 03000655

Rhode Island

Providence County

National and Providence Worsted Mills, 166 Valley St., Providence, 03000656

Poirier's Diner, 1467 Westminster St., Providence, 03000657

South Carolina

Greenville County

Burdette Building, 104 E. Curtis St., Simpsonville, 03000660

Lee County

Mt. Zion Presbyterian Church, SC 154, St. Charles Rd., Bishopville, 03000661

Marion County

Mullins Commercial Historic District, Along portions of Main, Front, and W. Wine Sts., Mullins, 03000662

Pickens County

Oolenoy Baptist Church Cemetery, 201 Miracle Hill Rd., Pickens, 03000659

Richland County

Carver Theatre, 1519 Harden St., Columbia, 03000658

Tennessee

Loudon County

Winton, John House, 18350 Martel Rd., Lenoir City, 03000665

Smith County

Fite—Williams—Ligon House, 212 Fite Ave. W, Carthage, 03000663

Washington County

Johnson City Commercial Historic District, E. Market St., E. Main St., Tipton St., Buffalo St., Spring St., S. Roan St., and Colonial Way, Johnson City, 03000666

Johnson City Warehouse and Commerce Historic District, Commerce St., W. Market St., McClure St., Boone St., Johnson City, 03000667

Texas

Val Verde County

Del Rio Cemeteries Historic District, Roughly bounded by W 2nd St., Johnson Blvd., and St. Peter's St., Del Rio, 03000664

Wisconsin

Door County

CHRISTINA NILSSON (shipwreck), (Great Lakes Shipwreck Sites of Wisconsin MPS) Baileys Harbor, Baileys Harbor, 03000668

Vernon County

Viroqua Downtown Historic District, Main St., roughly bounded by W. Court, E. Jefferson and the odd numbered 200 blk of S. Main St., Viroqua, 03000669

A request for REMOVAL has been made for the following resources:

Mississippi

Clay County

Cooper, Robert L., House (Clay County MPS) Mhoon Valley Rd., W of West Point West Point vicinity, 94001635

Lowndes County

Bethel Presbyterian Church, 12 mi. off U.S. 45, Columbus vicinity, 86003126

[FR Doc. 03–15980 Filed 6–24–03; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Final)]

Saccharin From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 11, 2002, following receipt of a petition filed with the Commission and Commerce by PMC Specialties Group, Inc., Cincinnati, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of saccharin from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 14, 2003 (68 FR 1860).[2] The hearing was held in Washington, DC, on May 15, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 25, 2003. The views of the Commission are contained in USITC Publication 3606 (June 2003), entitled *Saccharin From China: Investigation No. 731–TA–1013 (Final).*

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] On February 11, 2003, Commerce published notice of postponement of its final determination (68 FR 6885) and extended the due date to May 12, 2003. Subsequently, the Commission published notice of a revised schedule for the final phase of its investigation (68 FR 8783, February 25, 2003).

Issued: June 20, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–16023 Filed 6–24–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Meeting Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency will hold a public meeting on Tuesday, July 15, 2003, at 10 a.m. at the Department of Justice, 1425 New York Avenue, NW., Washington, DC, 13th Floor Conference Room. The subject of the meeting will be the status of the implementation of the provisions of the seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999. (*United States* v. *Caterpillar,* Case No. 1:98CV02544; *United States* v. *Navistar International Transportation Corporation,* Case No. 1:98CV02545; *United States* v. *Cummins Engine Company,* Case No. 1:98CV02546; *United States* v. *Detroit Diesel Corporation,* Case No. 1:98CV02548; *United States* v. *Volvo Truck Corporation,* Case No. 1:98CV02547; *United States* v. *Mack Trucks, Inc.,* Case No. 1:98CV01495; and *United States* v. *Renault Vehicles Industries, S.A.,* Case No. 1:98CV02543). In supporting entry by the court of the decrees, the United States committed to meet with States, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. This is the eighth such public meeting.

Future meetings will be announced here and on EPA's Diesel Engine Settlement Web site at: *http://www.epa.gov/compliance/civil/programs/caa/diesel/index.html.*

Interested parties may contact the Environmental Protection Agency prior to the meeting at the address listed below with questions or suggestions for topics of discussion.

Agenda (times are approximate)

1. Panel remarks 10 a.m.

Remarks by DOJ and EPA regarding implementation of the provisions of the diesel engine consent decrees.

2. Public comments and questions.

Adjourn 12 p.m.

For further information, please contact: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: *wick.anne@epa.gov.*

Karen S. Dworkin,

Assistant Chief, Environment & Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 03–16075 Filed 6–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decrees

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *David P. Burkel, Sr., Douglas Ackling and Duane Moench,* Civ. Act. No. A3–00–165, were lodged with the United States District Court for the District of North Dakota on June 18, 2003. These proposed Consent Decrees concern a complaint filed by the United States of America against Defendants David P. Burkel, Sr., Douglas Ackling and Duane Moench, pursuant to sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, to obtain injunctive relief and impose civil penalties against the Defendants for discharging dredged or fill material into waters of the United States without a permit. In addition, the complaint seeks injunctive relief and civil penalties against Defendant David P. Burkel, Sr., pursuant to section 308 of the Clean Water Act, 33 U.S.C. 1318, for failure to adequately respond to information requests propounded by the United States Environmental Protection Agency.

The first Consent Decree is entered into between the United States and Defendant David P. Burkel, Sr. That Consent Decree (a) prohibits Defendant Burkel from discharging any pollutant into waters of the United States without complying with the Clean Water Act or its implementing regulations; (b) requires him to perform a restoration/mitigation plan; and (c) requires him to pay a civil penalty.

The second Consent Decree is entered into between the United States and Defendants Douglas Ackling and Duane Moench.That Consent Decree (a) prohibits Defendants Ackling and Moench from discharging any pollutant into waters of the United States without complying with the Clean Water Act or its implementing regulations, and (b) requires them each to pay a civil penalty.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to Daniel W. Pinkston, Environmental Defense Section, U.S. Department of Justice, 999—18th Street, Suite 945 North, Denver, Colorado 80202, and refer to *United States* v. *David P. Burkel, Sr.,* et al., Civ. Act. No. A3–00–165 (D.N.D.), DJ # 90–5–1–1–05709.

The proposed Consent Decrees may be examined at the Clerk's Office, United States District Court for the District of North Dakota, Quentin N. Burdick United States Courthouse, 655 1st Avenue, North, Room 130, Fargo, North Dakota 58102–4932. In addition, the proposed Consent Decrees may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Scott Schachter,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 03–16071 Filed 6–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on June 16, 2003, a proposed First Amendment to Consent Decree in *United States* v. *Conoco Inc.,* Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas. The proposed amendment addresses several issues, primarily the change in ownership of the Denver refinery, which is being sold to Suncor Energy (U.S.A.) Inc. It also addresses changes to the requirements of the catalyst additive trials at the Conoco facilities, adjustment to emission reduction totals for heaters and boilers, and modification of certain emission monitoring requirements.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. (''Conoco'') pursuant to section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's four refineries in Colorado, Montana, Oklahoma and Louisiana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the First Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United*

States v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period the First Amendment to 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 First Amendment to Consent Decree, may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–16073 Filed 6–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that the Department of Justice will receive comments on a proposed amended Consent Decree in *United States* v. *Gopher State Ethanol, Inc.,* (''Gopher State''), Civil Action No. CV02–3793 JEL/RLE, through July 7, 2003. The amended Consent Decree was lodged with the United States District Court for the District of Minnesota on May 22, 2003. Notice of the lodging was published in the **Federal Register** on June 5, 2003 (Volume 68, Number 108, Page 33740).

By this notice the comment period is extended to July 7, 2003. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Gopher State Ethanol, Inc.,* D.J. Ref. 90–5–2–1–07784/8.

The amended Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period the ADM Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree, may also be obtained by mail from the Consent Decree Library, 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 $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–16072 Filed 6–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Pursuant to section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on June 6, 2003, a proposed Consent Decree in *United States* v. *Weyerhaeuser Company,* 4:03–CV–90–(H)(3) (E.D.N.C.), was lodged with the United States District Court for the Eastern District of North Carolina.

In this action the United States sought to require the Defendant Weyerhaeuser Company to conduct remedial design and remedial action to address releases and threatened releases of hazardous substances at the Weyerhaeuser Company Plymouth Wood Treating Plant Superfund Site (''Site'') near the town of Plymouth in Martin County, North Carolina. The United States also sought to recover certain past and future costs incurred by the Environmental Protection Agency (EPA) during the performance of response actions at the Site.

Under the Decree, the Defendant will perform the remedial design and remedial action at Operable Unit #1, a former landfill at the Site, pursuant to the June 19, 2002, Record of Decision (ROD). The Defendant will also pay $14,507 to the Hazardous Substances Superfund in reimbursement of EPA's previously unreimbursed response costs at or in connection with the Site incurred before March 24, 1998. In addition, Defendant will pay EPA's future costs associated with Operable Unit #1.

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, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Weyerhaeuser Company,* (E.D.N.C.), DOJ Ref. 90–11–3–07838.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of North Carolina, 310 New Bern Avenue, Suite 800, Raleigh, North Carolina 27601, and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington DC 20044–7611. In requesting a copy, please refer to *United States* v. *Weyerhaeuser Company* (E.D.N.C.), DOJ Ref. 90–11–3–07838, and enclose a check in the amount of $70.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–16074 Filed 6–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day emergency notice of information collection under review: new collection; eForm 6 access request.

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by July 3, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only paid for 180

days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Tom Stewart, Chief, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New.

(2) *The title of the form/collection:* eForm 6 Access Request.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* ATF F 5013.3. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 system. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete the form in approximately 18 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 150 hours.

If additional information is required contact Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 19, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–15996 Filed 6–24–03; 8:45 am]

BILLING CODE 4410–FP–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–073)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by August 24, 2003.

ADDRESSES: All comments should be addressed to Mr. David Chambers, Code EI, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Title IX Recipient Request.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: The information collected will be analyzed and used by NASA to determine NASA grant recipients' compliance with Title IX of the Education Amendments of 1972.

Affected Public: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 917.

Responses Per Respondent: 1.

Annual Responses: 917.

Hours Per Request: Approx. ½ hour.

Annual Burden Hours: 459.

Frequency of Report: Annually; Other (one time).

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–15965 Filed 6–24–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: Written comments should be received by August 25, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf,gov.*

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send e-mail to *splimptod@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance of the Science Resources Statistics Survey Improvement Projects.

OMB Approval Number: 3145–0174.

Expiration Date of Approval: December 31, 2003.

Abstract. Generic Clearance of the Science Resources Statistics Survey Improvement Projects. The National Science Foundation's (NSF) Division of Science Resources Statistics (SRS) needs

to collect timely data on constant changes in the science and technology sector and to provide the most complete and accurate information possible to policy makers in Congress and throughout government and academia. NSF/SRS conducts many surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data is obtained from these surveys. State-of-the-art methodology will be used to develop evaluate, and test questionnaires as well as to improve survey methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed.

Expected Respondents. The respondents will be from industry, academia, nonprofit organizations, members of the public, and Federal agencies. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person, but quantitative procedures may be conducted using the same mode as the survey under investigation. Up to 8,020 respondents will be contacted across all survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NSF's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, behavior coding, split panel tests, and field tests.

Information being collected is not considered sensitive. In general, assurances of data confidentiality will not be provided to respondents in the pretests. Instead, respondents have the option of requesting that any and all data they provide be kept confidential.

Use of the Information. The purpose of these studies is to use the latest and most appropriate methodology to improve NSF surveys. The data will be used internally to improve NSF surveys. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NSF surveys will help policy makers in decisions on research and development funding, graduate education, scientific and technical workforce, regulations, and reporting guidelines, as well as contributing to reduced survey costs.

Burden on the Public. NSF estimates that a total reporting and recordkeeping burden of 11,200 hours will result from pretesting to improve its surveys. The calculation is:

TABLE 1.—ANTICIPATED SURVEYS TO UNDERTAKE IMPROVEMENT PROJECTS, ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER SURVEY

Survey name	Number of respondents [1]	Hours
Graduate Student Survey	500	1,500
Sestat Surveys	5,000	5,000
New Postdoc Survey	800	1,000
New and Redesigned R&D Surveys:		
Academic R&D	600	600
Government R&D	50	50
Nonprofit R&D	200	100
Industry R&D	500	1,000
Survey of Scientific & Engineering Facilities	300	150
Instrumentation	150	300
Public Understanding of S&E Surveys	200	50
Scientific Publications	120	250
Additional surveys not specified	400	1,200
Total	8,820	11,200

[1] Number of respondents listed for any individual survey may represent several methodological improvement projects.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 19, 2003.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–15966 Filed 6–24–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on July 8, 2003, at 12:00 pm, in Rockville, Maryland. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with

radiation standards. Agencies represented on ISCORS include the NRC, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, and the U.S. Department of Health and Human Services. The Office of Science and Technology Policy, the Office of Management and Budget, and State representatives may be observers at meetings. The objectives of ISCORS are to: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution. ISCORS meetings include presentations by the chairs of the subcommittees and discussions of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. One of the four ISCORS meetings each year is open to all interested members of the public. There will be time on the agenda for members of the public to provide comments. Summaries of previous ISCORS meetings are available at the ISCORS Web site, *http://www.iscors.org* and the final agenda for the July meeting will be posted on the site shortly before the meeting.

DATES: The meeting will be held from 12 p.m. to 4 p.m. on Tuesday, July 8, 2003.

ADDRESSES: The meeting will be held in the NRC auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Kennedy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6668; fax 301–415–5397; E-mail: *jek1@nrc.gov.*

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the NRC auditorium is located adjacent to the White Flint Metro Station on the Red Line.

Dated at Rockville, MD, this 19th day of June, 2003.

For the Nuclear Regulatory Commission.

C. William Reamer,

Deputy Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–16017 Filed 6–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on July 8, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss General Electric Company proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, July 8, 2003—8:30 a.m. until the conclusion of business.

The Subcommittee will be briefed on the application of TRACG code to the Economic and Simplified Boiling Water Reactor (ESBWR) and the ESBWR scaling analysis. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, General Electric, and other interested persons regarding this matter. 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: 301–415–1813) 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 7:30 a.m. and 4:15 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 to the agenda.

Dated: June 19, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–16018 Filed 6–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on July 8, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, July 8, 2003—1 p.m. until the conclusion of business.

The Subcommittees will hear an update on the development of the mitigating system performance indices. The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittees 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, Ms. Maggalean Weston (Telephone: 301–415–3151) 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 8 a.m. and 5:30 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 to the agenda.

Dated: June 19, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–16019 Filed 6–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on

July 8, and 9 (Tentative), 2003, Room T–2B1, 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 ACRS, 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:

Tuesday, July 8, 2003—11 a.m.–12:30 p.m. and Wednesday, July 9, 2003—12:30–1:30 p.m. (Tentative).

The Subcommittee will discuss proposed ACRS activities and related matters. 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. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 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 7:30 a.m. and 4:15 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: June 19, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–16020 Filed 6–24–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48055; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 4 to the Options Intermarket Linkage Plan Relating to Satisfaction Orders, Trade-Throughs and Other Nonsubstantive Changes, as Modified by an Amendment Thereto

June 18, 2003.

I. Introduction

On September 24, 2002, October 1, 2002, October 9, 2002, November 6, 2002, and November 26, 2002, the International Securities Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the American Stock Exchange LLC (''Amex'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 11Aa3–2 thereunder,[2] an amendment (''Joint Amendment No. 4'') to the Options Intermarket Linkage Plan (''Linkage Plan'').[3]

Proposed Joint Amendment No. 4 was published for comment in the **Federal Register** on December 27, 2002.[4] No comments were received on the proposal. On January 28, 2003, January 28, 2003, January 29, 2003, January 29, 2003, and January 29, 2003, the ISE, the Phlx, the Amex, the CBOE, and the PCX, respectively, filed with the Commission an amendment to proposed Joint Amendment No. 4 to provide that the limitation on the liability for trade-throughs for the last seven minutes of the trading day would be effective for a one-year pilot period and to clarify that the limitation on liability would apply to each Satisfaction Order (''Pilot Amendment'').[5] On January 31, 2003, the Commission approved Joint Amendment No. 4, as modified by the Pilot Amendment, on a temporary basis not to exceed 120 days, and solicited comment on the Pilot Amendment from interested persons.[6] No comments were received on the Pilot Amendment. This order approves Joint Amendment No. 4, as modified by the Pilot Amendment.

II. Description of Proposed Joint Amendment No. 4

In proposed Joint Amendment No. 4, as modified by the Pilot Amendment, the Participants propose to clarify that the proposed limitation on liability for trade-throughs for the last seven minutes of the trading day would apply to the filling of 10 contracts per exchange, per transaction. Pursuant to the Pilot Amendment, this proposal would be effective for a one-year pilot period, and would apply to each Satisfaction Order. The proposed Linkage Plan amendment also would: (1) Decrease the time period a member must wait after sending a linkage order to a market before that member can trade through that market from 30 seconds to 20 seconds; (2) prohibit linkage fees for executing satisfaction orders; and (3) make other nonsubstantive revisions to the Linkage Plan.

III. Discussion

After careful consideration, the Commission finds that the proposed Joint Amendment to the Linkage Plan, as amended by the Pilot Amendment, is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the proposed Joint Amendment, as modified by the Pilot Amendment, is consistent with section 11A of the Act,[8] and Rule

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, May 30, 2002, and January 29, 2003, respectively, the Commission approved amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001), 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002), and 47274 (January 29, 2003).

[4] *See* Securities Exchange Act Release No. 47028 (December 18, 2002), 67 FR 79171.

[5] *See* letters from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan Katz, Secretary, Commission, dated January 27, 2003; Charles Rogers, Executive Vice President, Phlx, to Jonathan Katz, Secretary, Commission, dated January 27, 2003; Jeffrey Burns, Assistant General Counsel, Amex, to Jonathan Katz, Secretary, Commission, dated January 28, 2003; Kathryn L. Beck, Senior Vice President, General Counsel and Corporate Secretary, PCX, to Jonathan Katz, Secretary, Commission, dated January 28, 2003; and Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan Katz, Secretary, dated January 29, 2003.

[6] *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003).

[7] In approving this proposed Linkage Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation.

[8] 15 U.S.C. 78k-1.

11Aa3–2 thereunder, [9] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

The Participants have represented to the Commission that members of various exchanges have raised concerns regarding their obligations to fill Satisfaction Orders (which result after a trade-through [10]) at the close of trading in the underlying security. Specifically, these members are concerned that they may not have sufficient time to hedge the positions they acquire.[11] The Participants believe their proposal to limit liability for trade-throughs for the last five minutes of trading in the underlying security to the filling of 10 contracts per exchange, per transaction, will protect small customer orders, yet establish a reasonable limit for their members' liability. The Participants represent that this proposal should not affect a member's potential liability under an exchange's disciplinary rule for engaging in a pattern or practice of trading through other markets under section 8(c)(i)(C) of the Linkage Plan.

The Pilot Amendment clarifies that the limitation on liability would apply to each Satisfaction Order. As amended, the proposal is limited to a one-year pilot period. The Commission believes the one-year pilot period will give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for trade-throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for trade-throughs near the end of the trading day leads to an increase in trade-throughs. The Commission expects the Participants to provide a report to the Commission at least sixty days prior to seeking permanent approval of the pilot program. The report should include information about the number and size of trade-throughs that occur during the last seven minutes of the trading day and the number and size of trade-throughs that occur during the rest of the trading day, the number and size of Satisfaction Orders that the Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the Participants use the underlying market to hedge their options positions.

The Commission finds that the proposal to reduce the amount of time a member must wait after sending a linkage order to a market before that member can trade through that market from thirty seconds to twenty seconds is appropriate because the Linkage Plan will retain the requirement that a Participant respond to a Linkage order within 15 seconds of receipt of that order.[12]

The Commission also finds that the proposal to establish a general prohibition against Linkage fees for executing Satisfaction Orders is appropriate. An exchange will receive a Satisfaction Order only when it has traded through customer orders on another exchange. The Commission agrees with the Participants that an exchange that has traded through another market should not be allowed to impose a fee on the aggrieved party that exercises its rights under the Linkage Plan to complain about the trade-through.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[13] and Rule 11Aa3–2(c)(4) thereunder,[14] that Joint Amendment No. 4, as modified by the Pilot Amendment, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16009 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 240.11Aa3–2.

[10] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[11] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

[12] The Participants have represented that they believe reducing the response time even further to five seconds would provide an opportunity for the transmittal of responses to orders, while also allowing their members to execute orders on their own exchanges in a timely manner.

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(4).

[15] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48063; International Series Release No. 1269]

List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

June 19, 2003.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934 [1] (the ''Act'').[2]

Rule 12g3–2(b) [3] provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The Rule requires the issuer to provide the Commission with information that it has: (1) Made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or (3) distributed or is required to distribute to its security holders.

When the Commission adopted Rule 12g3–2(b) and other rules [4] relating to foreign securities, it indicated that from time to time it would publish lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[5] The purpose of this release is to call to the attention of brokers, dealers and investors, that some form of relatively current information concerning the issuers included in this list is available in the Commission's public files.[6] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] The Commission continues to expect that brokers and dealers will consider this

[1] 15 U.S.C. 78a *et seq.*

[2] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12g3–2(b).

[4] Exchange Act Release No. 8066 (April 28, 1967).

[5] Exchange Act Release No. 45855 (May 1, 2002) was the last such list.

[6] Inclusion of an issuer on the list in this release is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of Rule12g3–2(b). The list does identify those issuers that have both claimed the exemption and have submitted relatively current information to the Commission as of May 21, 2003.

[7] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to review, maintain in its files, and make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending those securities to their customers.[8]

Direct any questions regarding Rule 12g3–2 or the list of issuers in this release to Nina Mojiri-Azad, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549–0302 ((202) 942–2990). This release is available on the Commission's Web site: *www.sec.gov*. Requests for copies may also be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549–0102 ((202) 942–8090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Company name	Country	File No.
10 Group plc	United Kingdom	82–5229
3DM Worldwide plc	United Kingdom	82–34705
4 Imprint Group plc	United Kingdom	82–5104
AB Lietuvos Telekomas	Lithuania	82–5086
Accor S.A	France	82–4672
ACOM Co. Ltd	Japan	82–4121
Adidas Salomon AG	Germany	82–4278
Advanced Info Service Public Co. Ltd	Thailand	82–3236
AEM S.p.A	Italy	82–4911
Aeroflot Russian International Airlines	Russia	82–4592
African Gem Resources Ltd	South Africa	82–34638
African Marine Minerals Corp	Canada	82–3329
Afrikander Lease Ltd	South Africa	82–34632
Agenix Ltd	Australia	82–34639
AIFUL Corp	Japan	82–4802
Air France	France	82–5050
Airspray N.V	Netherlands	82–34700
Aldeasa S.A	Spain	82–4774
All Nippon Airways Co. Ltd	Japan	82–1569
Allgreen Properties Ltd	Singapore	82–4959
Alpha General Holdings Ltd	Bermuda	82–34649
Altai Resources, Inc	Canada	82–2950
Altran Technologies S.A	France	82–5164
Amadeus Global Travel Distribution S.A	Spain	82–5173
America Telecom S.A de C.V.	Mexico	82–34636
American Manor Corp	Canada	82–4158
AMP Ltd	Australia	82–34713
AMRAD Corp. Ltd	Australia	82–4867
AmSteel Corp Berhad	Malaysia	82–3318
Angang New Steel Co. Ltd	China	82–34663
Anglo American Corp. of South Africa	South Africa	82–97
Anglo Irish Bank Corp. plc	Ireland	82–3791
Antofagasta plc	United Kingdom	82–4987
AO Mosenergo	Russia	82–4475
AO Samaraenergo	Russia	82–4708
AO Siberian Oil Company	Russia	82–4882
AO Surgutneftegas	Russia	82–4302
AO TD Gum	Russia	82–4132
Apasco	Mexico	82–3103
APF Energy Trust	Canada	82–5166
Applied Gaming Solutions of Canada Inc	Canada	82–4832
Applied Optical Technologies plc	United Kingdom	82–5165
Aquarius Platinum Ltd	Bermuda	82–5097
Arcelor SA	Luxembourg	82–34727
Arcon International Resources plc	Ireland	82–4803
Argent Resources Ltd	Canada	82–5091
Arisawa Manufacturing Co. Ltd	Japan	82–4620
Artel Solutions Group Holdings Limited	Cayman Islands	82–34697
Asia Fiber Public Co. Ltd	Thailand	82–2842
Atlas Copco	Sweden	82–812
Australian Gas Light Company	Australia	82–4797
Australian Oil & Gas Corp. Ltd	Australia	82–4576
Austrian Airlines	Austria	82–4970
Auterra Ventures Inc	Canada	82–4653
Autogen Ltd	Australia	82–34666
Avalon Ventures Ltd	Canada	82–4427
Avgold Ltd	South Africa	82–4482
BAA plc	United Kingdom	82–3372
Bacardi Ltd	Bermuda	82–4992
Banca Popolare di Lodi	Italy	82–4855
Banco Mercantil S.A	Bolivia	82–4296

[8] *See, e.g., Hanley* v. *SEC*, 415 F.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company name	Country	File No.
Bandai Co. Ltd	Japan	82–3919
Bangkok Bank Public Co. Ltd	Thailand	82–4835
Bank Handlowy w Warszawie SA	Poland	82–4613
Bank of East Asia Ltd	Hong Kong	82–3443
Bank of Fukuoka Ltd	Japan	82–1117
Bank Vozrozhdeniye	Russia	82–4257
BankInter S.A	Spain	82–2972
BCE Emergis Inc	Canada	82–5206
Beghin Say	France	82–5209
Beijing Beida Jade Bird Universal Sci-Tech Co. Ltd	China	82–34651
Beijing Enterprises Holdings Ltd	Hong Kong	82–34642
Belluna Co. Ltd	Japan	82–5233
Benfield Group Ltd	Bermuda	82–34726
Bespak plc	United Kingdom	82–3349
Beta Systems Software AG	Germany	82–4631
BHP Steel Ltd	Australia	82–34676
Billerud AB	Sweden	82–34625
BioMS Medical Corp	Canada	82–34689
Bionomics Limited	Australia	82–34682
Blackrock Ventures Inc	Canada	82–4555
Blue Power Energy Corp	Canada	82–2213
BNP Paribas	France	82–3757
BOC Hong Kong Holdings Ltd	Hong Kong	82–34675
Bohler Uddeholm AG	Austria	82–4089
Boliden Ltd	Canada	82–4707
Bombardier Inc	Canada	82–3123
Boots Group plc	United Kingdom	82–34701
Boral Ltd	Australia	82–5054
Bradford & Bingley plc	United Kingdom	82–5154
Brambles Industries plc	United Kingdom	82–5205
Brazil Realty S.A	Brazil	82–4454
Bresagen Ltd	Australia	82–5135
Bridgestone Corp	Japan	82–1264
Burberry Group plc	United Kingdom	82–34691
Burns Philip & Company Ltd	Australia	82–1565
BWT Aktiengesellschaft	Austria	82–5221
C Squared Developments Inc	Canada	82–1756
C.I. Fund Management Inc	Canada	82–4994
Cal-Star Inc	Canada	82–2406
Canadian Everock Explorations Inc	Canada	82–5163
Canadian Metals Exploration Ltd	Canada	82–2143
Canadian Oil Sands Trust	Canada	82–5189
Canadian Western Bank	Canada	82–4478
Canfibre Group Ltd	Canada	82–2222
Cap Gemini S.A	France	82–5065
Capitaland Ltd	Singapore	82–4507
Caribbean Cement Co. Ltd	Jamaica	82–3715
Carso Global Telecom	Mexico	82–4379
Cassa di Risparmio di Firenze S.p.A	Italy	82–5126
Cathay Pacific Airlines Ltd	Hong Kong	82–1390
Cementos Lima S.A	Peru	82–3911
Centrais Eletricas de Santa Caterina	Brazil	82–3795
Central Termica Guemas S.A	Argentina	82–5145
Centrica plc	United Kingdom	82–4518
Cereol	France	82–5210
Cerestar	France	82–5211
Cerveceria Nacional S.A	Panama	82–4704
Ceska Sporitelna A.S	Czech Republic	82–4384
CESP Companhia Energetica de Sao Paulo	Brazil	82–3691
Challenger Minerals Ltd	Canada	82–3666
Champion Natural Health Com Inc	Canada	82–4485
Chaoda Modern Agriculture Holdings Ltd	Cayman Islands	82–34644
Chengdu PTIC Telecommunications Cable Co. Ltd	China	82–4573
Cheung Kong Holdings Ltd	Hong Kong	82–4138
China Oilfield Services Ltd	China	82–34696
China Online Bermuda Ltd	Bermuda	82–3654
China Pharmaceutical Enterprise & Investment Corp	Hong Kong	82–4135
China Resources Enterprise Ltd	Hong Kong	82–4177
China Steel Corp	Taiwan	82–3296
China Strategic Holdings Ltd	Hong Kong	82–3596
Chr. Hansen Holding A/S	Denmark	82–34732
Chugai Pharmaceutical Co. Ltd	Japan	82–34668
Cia Forca e Luz Cataguases Leopoldina	Brazil	82–5147
CITIC Pacific Ltd	Hong Kong	82–5232

Company name	Country	File No.
Citiraya Industries Ltd	Singapore	82–34706
CML Microsystems plc	United Kingdom	82–3176
Coca Cola Amatil Ltd	Australia	82–2994
Companhia de Transmissao de Energeria Electrica Paulista	Brazil	82–4980
Companhia Siderurgica Belgo Mineira	Brazil	82–3771
Companhia Suzano De Papel E Celulose	Brazil	82–3550
Compass Group plc	United Kingdom	82–5161
Computershare Ltd	Australia	82–4966
Concept Wireless Inc	Canada	82–4003
Consolidated Odyssey Exploration Inc	Canada	82–3934
Consolidated Pine Channel Gold Corp	Canada	82–2583
Consolidated Westview Resource Corp	Canada	82–2601
Continental AG	Germany	82–1357
Continental Precious Minerals Inc	Canada	82–3358
Cora Resources Ltd	Canada	82–4571
Corporacion Geo S.A. de C.V.	Mexico	82–3870
Corriente Resources Inc	Canada	82–3775
Cross Lake Minerals Ltd	Canada	82–2636
CSK Corporation	Japan	82–781
Cue Energy Resources Limited	New Zealand	82–34692
Curion Venture Corp	Canada	82–3602
Curran Bay Resources	Canada	82–34724
Cybird Co. Ltd	Japan	82–5139
Cycle & Carriage Ltd	Singapore	82–3163
Dah Sing Financial Group	Hong Kong	82–4272
Daido Life Insurance Co	Japan	82–34658
Dairy Farm International Holdings Ltd	Hong Kong	82–2962
Davide Campari Milano S.p.A	Italy	82–5203
DBS Group Holdings Ltd	Singapore	82–3172
De Longhi S.p.A	Italy	82–34652
Del Monte Pacific Ltd	British Virgin Islands	82–5068
Den Danske Bank Aktieselskab	Denmark	82–1263
Dentsu Inc	Japan	82–5241
DEPFA Deutsche Pfandbriefbank AG	Germany	82–4822
Deutsche Beteiligungs Holding AG	Germany	82–4977
Deutsche Lufthansa AG	Germany	82–4691
Devine Entertainment Corp	Canada	82–4118
Dexia Belgium	Belgium	82–4606
Dixons Group plc	United Kingdom	82–3331
Dofasco Inc	Canada	82–3226
DRC Resources Corp	Canada	82–713
DSM N.V	Netherlands	82–3120
E New Media Co. Ltd	Hong Kong	82–5101
East Japan Railway Co	Japan	82–4990
Eastmain Resources Inc	Canada	82–4421
Editora Saraiva S.A	Brazil	82–5046
EI Environmental Engineering Concepts Ltd	Canada	82–1598
Eisai Co. Ltd	Japan	82–4015
E-Kong Group Ltd	Bermuda	82–34653
Electrocomponents plc	United Kingdom	82–34672
Emgold Mining Corp	Canada	82–3003
EMI Group plc	United Kingdom	82–373
Enerco Energy Service Co., Inc	Canada	82–1162
Energy Africa Ltd	South Africa	82–4306
EnviroMission Limited	Australia	82–34693
Epic Oil & Gas Ltd	Canada	82–5045
Erciyas Biracilik ve Malt Sanayi AS	Turkey	82–4144
Erste Bank	Austria	82–5066
Essilor International	France	82–4944
European Aeronautic Defence & Space Co	Netherlands	82–34662
Eurotunnel plc	United Kingdom	82–3000
Eurotunnel S.A	France	82–2999
Evergreen Forests Ltd	New Zealand	82–4114
Exel plc	United Kingdom	82–34655
Expo Resources Inc	Canada	82–34730
Fancamp Resources Ltd	Canada	82–3929
FANCL Corporation	Japan	82–5032
Ferreyros SA	Peru	82–34695
First Australian Resources N.L	Australia	82–3494
First Pacific Co. Ltd	Hong Kong	82–836
First Quantum Minerals Ltd	Canada	82–4461
First Silver Reserve Inc	Canada	82–3449
First Tractor Company Ltd	China	82–4772
FJA AG	Germany	82–5077

Company name	Country	File No.
FNX Mining Co. Inc	Canada	82–34684
Fortis Amev	Belgium	82–3118
Fortis S.A./N.V	Belgium	82–5234
Foschini Ltd	South Africa	82–4044
Fosters Brewing Group Ltd	Australia	82–1711
Franc Or Resources Corp	Canada	82–4164
Friends Provident plc	United Kingdom	82–34640
Frutarom Industries Ltd	Israel	82–4357
Fubon Insurance Co. Ltd	Taiwan	82–4788
Fuji Photo Film Co. Ltd	Japan	82–78
Fuji Television Network	Japan	82–5176
Fujisawa Pharmaceutical Co. Ltd	Japan	82–5231
Fujitsu Support & Service	Japan	82–4885
Funai Electric Ltd	Japan	82–5078
G. Accion S.A. de C.V	Mexico	82–4590
Gambro AB	Sweden	82–34731
Gamesa S.A	Spain	82–5201
Gammon Lakes Resources Inc	Canada	82–4909
Genbel South Africa Ltd	South Africa	82–235
Gencor Ltd	South Africa	82–311
Generale de Sante S.A	France	82–34626
Genetic Technologies Ltd	Australia	82–34627
Genting Berhad	Malaysia	82–4962
GGL Diamond Corp	Canada	82–1209
Giordano International Ltd	Bermuda	82–3780
Gitennes Exploration Inc	Canada	82–4170
Glanbia Public Ltd	Ireland	82–4734
Globel Direct Inc	Canada	82–5084
Glorius Sun Enterprises Ltd	Bermuda	82–4581
Golconda Resources Ltd	Canada	82–3167
Gold Peak Industries (Holdings) Ltd	Hong Kong	82–3604
Goldas Kuyumculuk Sanayi Ithalat Ihracat AS	Turkey	82–5223
Goldcliff Resource Corp	Canada	82–2748
Golden Arch Resources Ltd	Canada	82–659
Golden Hope Mines Ltd	Canada	82–3023
Goldshore Holdings plc	United Kingdom	82–34678
Goodman Fielder Ltd	Australia	82–2009
Govett Strategic Investment Trust plc	United Kingdom	82–287
Grand Hotel Holdings Ltd	Hong Kong	82–3408
Grasim Industries Ltd	India	82–3322
Great Eagle Holdings Ltd	Bermuda	82–3940
Great Quest Metals Ltd	Canada	82–3116
Great-West Lifeco Inc	Canada	82–34728
Greencore Group plc	Ireland	82–4908
Grupo Carso S.A. de C.V	Mexico	82–3175
Grupo Comercial Gomo S.A. de C.V	Mexico	82–34661
Grupo Dataflux	Mexico	82–4899
Grupo Ferrovial S.A	Spain	82–4939
Grupo Financiero BBVA Bancomer S.A. de C.V	Mexico	82–3273
Grupo Gigante, S.A. de C.V	Mexico	82–3142
Grupo Herdez S.A. de C.V	Mexico	82–3818
Grupo Industrial Saltillo	Mexico	82–5019
Grupo Melo S.A	Panama	82–4893
Grupo Mexico S.A. de C.V	Mexico	82–4582
Grupo Posadas S.A. de C.V	Mexico	82–3274
GTECH International Resources Ltd	Canada	82–3779
Guangdong Investment Ltd	Hong Kong	82–3772
Guangzhou Investment Co. Ltd	Hong Kong	82–4247
Guangzhou Pharmaceutical Co. Ltd	China	82–34656
GUS plc	United Kingdom	82–5017
Gzitic Hauling Holdings Ltd	Hong Kong	82–4195
H. Lundbeck A.S	Denmark	82–4973
Hagemeyer N.V	Netherlands	82–4865
Halifax Group plc	United Kingdom	82–5003
Hang Lung Properties Ltd	Hong Kong	82–3410
Hang Seng Bank Ltd	Hong Kong	82–1747
Hanny Holdings Ltd	Bermuda	82–3638
Hansom Eastern Holdings Ltd	Cayman Islands	82–4152
HBOS plc	United Kingdom	82–5222
Heineken Holding N.V	Netherlands	82–5149
Heineken N.V	Netherlands	82–4953
Henderson Investment Ltd	Hong Kong	82–3964
Henderson Land Development Co. Ltd	Hong Kong	82–1561
Henkel KGAA	Germany	82–4437

Company name	Country	File No.
Henlys Group plc	United Kingdom	82–5051
Herald Resources Ltd	Australia	82–4295
Highveld Steel & Vanadium Corp. Ltd	South Africa	82–596
Hikari Tsushin Inc	Japan	82–4998
Hilasal Mexicana S.A. de C.V	Mexico	82–4743
Hindalco Industries Ltd	India	82–3428
Hino Motors Ltd	Japan	82–1388
Hip Interactive Corp	Canada	82–34720
Hoganas AB	Sweden	82–3754
Hokuriku Bank Ltd	Japan	82–1045
Holcim Ltd	Switzerland	82–4093
Hong Kong & China Gas Company Ltd	Hong Kong	82–1543
Hong Kong Construction Holdings Ltd	Hong Kong	82–4029
Hong Kong Electric Holdings	Hong Kong	82–4086
Hornbach-Baumarkt AG	Germany	82–3729
Hypothekenbank in Essen AG	Germany	82–4883
Hysan Development Company Ltd	Hong Kong	82–1617
Hyundai Motor Company	Korea	82–3423
I.T.C. Limited	India	82–3470
IEI Energy Inc	Canada	82–1032
IEM S.A. de C.V	Mexico	82–2337
Impala Platinum Holdings Ltd	South Africa	82–359
Imperial Metals Corp	Canada	82–34714
Imperial One International Ltd	Australia	82–1257
Inapa Investimentos Participacoes e Gestao S.A	Portugal	82–4864
Inca Pacific Resources Inc	Canada	82–1665
Industria de Diseno Textil S.A	Spain	82–5185
International Health Partners Inc	Canada	82–4868
International PBX Ventures Ltd	Canada	82–2635
International Road Dynamics Inc	Canada	82–3899
Internet Identity Presence Co. Inc	Canada	82–478
Interpump Group S.p.A	Italy	82–4511
Interstar Mining Group. Inc	Canada	82–3759
Invensys plc	United Kingdom	82–2142
Investor AB	Sweden	82–34698
IP Applications Corp	Canada	82–34637
IT Holding SpA	Italy	82–4728
Italian Thai Development Public Co. Ltd	Thailand	82–4299
Itech Capital Corp	Canada	82–3200
Jamaica Broilers Group Ltd	Jamaica	82–3720
Jannock Properties Ltd	Canada	82–5062
Japan Airlines Company Ltd	Japan	82–122
Japan Future Information Technology & Systems	Japan	82–34657
Japan Retail Fund Investment Corp	Japan	82–34716
Japan Telecom Co	Japan	82–3943
Jardine Matheson Holdings Ltd	Bermuda	82–2963
Jardine Strategic Holdings Ltd	Bermuda	82–3085
Jasmine International Public Co. Ltd	Thailand	82–4876
JCDecaux S.A	France	82–34631
JD Group Limited	South Africa	82–4401
JG Summit Holdings Inc	Philippines	82–3572
Jiangsu Expressway Co. Ltd	China	82–34677
Jiangxi Copper Co. Ltd	China	82–34715
Jinhui Holdings Co. Ltd	Hong Kong	82–3765
Jinhui Shipping & Transportation Ltd	Bermuda	82–4054
JKX Oil & Gas plc	United Kingdom	82–34709
JNR Resources Inc	Canada	82–4720
Johnnic Communications Ltd	South Africa	82–5184
Johnnic Holdings Ltd	South Africa	82–5128
Johnson Electric Holdings Ltd	Hong Kong	82–2416
Johnson Matthey plc	United Kingdom	82–2272
Jones David Ltd	Australia	82–4230
JSAT Corp	Japan	82–5111
JSC Buryatzoloto	Russia	82–4619
JSC Electrosvyaz Rostov Region	Russia	82–4740
JSC Irkutskenergo	Russia	82–4458
JSC Khantymansiyskokrtelecom	Russia	82–4823
JSC Moscow City Telephone Network	Russia	82–4957
JSC Primorsk Shipping Corp	Russia	82–4717
JSC Uralsvyasinform	Russia	82–4545
Jugos del Valle S.A. de C.V	Mexico	82–4258
Justsystem Corp	Japan	82–4732
K Wah Construction Materials Ltd	Hong Kong	82–3850
Kawasaki Heavy Industries Ltd	Japan	82–4389

Company name	Country	File No.
Kawasaki Steel Corp	Japan	82–3389
Keells John Holdings Ltd	Sri Lanka	82–3854
Keika Express Co. Ltd	Japan	82–34718
Kelso Technologies Inc	Canada	82–2441
KGHM Polska Miedz S.A	Poland	82–4639
Kidde plc	United Kingdom	82–5153
Kidston Gold Mines Ltd	Australia	82–2351
Kimberly Clark de Mexico S.A. de C.V	Mexico	82–3308
Kingfisher plc	United Kingdom	82–968
Kirin Brewery Co	Japan	82–188
Klabin S.A	Brazil	82–34628
Kobe Steel Ltd	Japan	82–3371
Komercni Banka A.S	Czech Republic	82–4154
Krones AG	Germany	82–3871
Kuala Lumpur Kepong Berhad	Malaysia	82–5022
Kumba Resources Ltd	South Africa	82–5217
Ladbroke Group plc	United Kingdom	82–1571
Lagardere Groupe SCA	France	82–3916
L'Air Liquide S.A	France	82–5224
Landesbank Rheinland-Phalz	Germany	82–4930
Lattice Group plc	United Kingdom	82–5110
Legacy Hotels Real Estate Investment Trust	Canada	82–34729
Legend Group Ltd	Hong Kong	82–3950
Lend Lease Corp. Ltd	Australia	82–3498
Lenzing AG	Austria	82–3207
LG Electronics Inc	Korea	82–3857
Liberty International plc	United Kingdom	82–34722
Liberty Life Association of Africa Ltd	South Africa	82–3924
Lindsey Morden Group	Canada	82–5143
Lion Industries Corp. Berhad	Malaysia	82–3342
Loblaw Companies Ltd	Canada	82–4918
Lonmin plc	United Kingdom	82–191
Lopro Corp	Japan	82–4664
L'Oreal	France	82–735
Lukoil Oil Co	Russia	82–4006
Magician Industries Holdings Inc	Bermuda	82–4358
Makro Atacadista S.A	Brazil	82–4095
Malbak Ltd	South Africa	82–3751
Man Group plc	United Kingdom	82–4214
Mandarin Oriental International Ltd	Hong Kong	82–2955
Manila Electric Co	Philippines	82–3237
Maple Minerals Inc	Canada	82–3650
Marcopolo S.A	Brazil	82–4310
Market Age plc	United Kingdom	82–5230
Marks & Spencer Group plc	United Kingdom	82–1961
Marubeni Corp	Japan	82–616
Matsui Securities Co. Ltd	Japan	82–5215
Maximum Ventures Inc	Canada	82–3923
Mayr Melnhof Karton AG	Austria	82–4052
M-Cell Ltd	South Africa	82–5192
MCK Mining Corp	Canada	82–3938
Medallion Resources Ltd	Canada	82–3656
Menzies Gold N.L	Australia	82–4536
Mercantil Servicios Financieros C.A	Venezuela	82–4648
Metorex Ltd	South Africa	82–34711
Metro Cash & Carry Ltd	South Africa	82–4279
Michael Page International plc	United Kingdom	82–5162
Michelin Compagnie Generale des Etablissements	France	82–3354
MIM Holdings Ltd	Australia	82–173
Minebea Co. Ltd	Japan	82–4551
Minto Explorations Ltd	Canada	82–4119
Mishibishu Gold Corp	Canada	82–2682
Misr International Bank S.A.E	Egypt	82–4629
Mitsubishi Corp	Japan	82–3784
MJ Maillis S.A	Greece	82–4975
Mobistar N.V./S.A	Belgium	82–4965
Molson Inc	Canada	82–2954
Morgan Crucible Co. plc	United Kingdom	82–3387
Mosaic Group Inc	Canada	82–34686
Mount Burgess Gold Mining Co	Australia	82–1235
Mytravel Group	United Kingdom	82–5049
NABI North American Bus Industries RT	Hungary	82–4925
Nadro S.A. de C.V	Mexico	82–4611
Name Brand Sales Inc	Canada	82–5218

Company name	Country	File No.
Nampak Limited	South Africa	82–3714
Nedcor Ltd	South Africa	82–3893
Nestle S.A	Switzerland	82–1252
New GKN	United Kingdom	82–5204
New World Infrastructure Ltd	Hong Kong	82–4218
NIB Capital Bank	Netherlands	82–5098
Nippon Steel Corp	Japan	82–5175
Nissan Motor Co	Japan	82–207
Nomura Research Institute Ltd	Japan	82–34673
Norilsk Nickel	Russia	82–4270
Norilsk Nickel Mining Metallurgical Co	Russia	82–5167
Norske Skogindustrier ASA	Norway	82–5226
Northern Abitibi Mining Corp	Canada	82–4749
Northern Orion Explorations Ltd	Canada	82–3153
Novar plc	United Kingdom	82–4542
Novozymes AS	Denmark	82–5116
Nuinsco Resources Ltd	Canada	82–1846
Nutreco Holding N.V	Netherlands	82–4927
NV Umicore S.A	Belgium	82–3876
Nyzhniodniprovsky Pipe Rolling Plant	Ukraine	82–4814
OAO Oil Co. Yukos	Russia	82–4209
OAO United Heavy Machinery Uralmash	Russia	82–5063
Occupational & Medical Innovations Ltd	Australia	82–5174
OJSC Marganetsky Ore Mining & Processing	Ukraine	82–34710
OJSC Ordzhonikidzevsky Ore Mining	Ukraine	82–34664
OJSC Volga Telecom	Russia	82–4642
Old Mutual plc	United Kingdom	82–4974
Olivetti S.p.A	Italy	82–5181
Olympus Optical Co. Ltd	Japan	82–3326
Omega Project Co. Ltd	Japan	82–5030
OMV AG	Austria	82–3209
Onesteel Ltd	Australia	82–5103
Onfem Holdings Ltd	Bermuda	82–3735
Opap S.A	Greece	82–34699
Open Joint Stock Company Dniproenergo	Ukraine	82–4844
Open Joint Stock Company Electrosvyaz of Primorsky Region	Russia	82–5200
Open Joint Stock Company Ukrnafta	Ukraine	82–4859
Orange S.A	France	82–5168
Orbis S.A	Poland	82–5025
Orkla AS	Norway	82–3998
Osterreichische Elektrizitatswirtschafts	Austria	82–4381
PA International	Bermuda	82–34685
Pacific Andes Int'l Holdings Ltd	Bermuda	82–4031
Pacific Topaz Resources Ltd	Canada	82–1285
Pacrim International Capital Inc	British Virgin Islands	82–3812
Paperlinx Ltd	Australia	82–5061
Paranapanema S.A	Brazil	82–5083
Paul Y ITC Construction Holdings Ltd	Bermuda	82–4217
Peninsular & Oriental Steam Navigation Co	United Kingdom	82–2083
Perfect Fry Corp	Canada	82–1609
Pernod Ricard S.A	France	82–3361
Phoenix Canada Oil Co. Ltd	Canada	82–3936
Pinault Printemps Redoute	France	82–5179
Pinetree Capital Corp	Canada	82–2759
PixelNet AG	Germany	82–5236
Polski Koncern Naftowy	Poland	82–5036
Power Corp. of Canada	Canada	82–137
Power Financial Corp	Canada	82–1716
Premier Oil Group plc	Scotland	82–34723
Prestbury Holdings plc	United Kingdom	82–34702
Prima Developments Ltd	Canada	82–34703
Progress Energy Ltd	Canada	82–34671
Prokom Software S.A	Poland	82–4700
Promatek Industries Ltd	Canada	82–1351
Promise Co. Ltd	Japan	82–4837
Promotora de Informaciones	Spain	82–5213
Provimi	France	82–5212
PSP Swiss Property AG	Switzerland	82–5052
PT Bank Buana Indonesia TBK	Indonesia	82–34694
PTT Exploration & Production plc	Thailand	82–3827
Public Power Corp S.A	Greece	82–34707
Puma AG Rudolf Dassler Sport	Germany	82–4369
Q P Corporation	Japan	82–4750
Qantas Airways	Australia	82–4130

Company name	Country	File No.
Rabobank Nederland	Netherlands	82–5010
Radio Gaucha S.A	Brazil	82–4341
Raffles Medical Group	Singapore	82–4926
Randstad Holding NV	Netherlands	82–4956
RAO Gazprom	Russia	82–4670
RAO Unified Energy Systems	Russia	82–4077
Raytec Development Corp	Canada	82–3553
RBS Participacoes S.A	Brazil	82–4338
RBS TV de Florianopolis S.A	Brazil	82–4340
RE Power Systems AG	Germany	82–34654
Remgro Ltd	South Africa	82–5106
Rentokil Initial plc	United Kingdom	82–3806
Resorts World Berhad	Malaysia	82–3229
Rexam plc	United Kingdom	82–3
Rich Minerals Corp	Canada	82–2832
Roadshow Holdings Ltd	Bermuda	82–5208
Roche Holding Ltd	Switzerland	82–3315
Rock Resources Inc.	Canada	82–4504
Rolls Royce Group plc	United Kingdom	82–34721
Rosneftegazstroy	Russia	82–4597
RWE AG	Germany	82–4018
S Oil Corp	Korea	82–34630
S&T System Integration & Technology Distribution	Austria	82–34634
S.A. Fabrica de Productos Alimenticios	Brazil	82–4870
SABMiller plc	United Kingdom	82–4938
Sage Group Ltd	South Africa	82–4241
Sahaviriya Steel Industries plc	Thailand	82–5008
SAIA-Burgess Electronics Holding AG	Switzerland	82–4810
Saipem S.p.A	Italy	82–4776
Sammy Corporation	Japan	82–5227
Sam's Seafood Holdings Ltd	Australia	82–34648
Samsung Electronics Co. Ltd	Korea	82–3109
Sancor Cooperativas Unidas Ltd	Argentina	82–4476
Sandvik AB	Sweden	82–1463
Santos Ltd	Australia	82–34
Sanyo Electric Co	Japan	82–264
Saputo Inc.	Canada	82–34670
Saskatchewan Wheat Pool	Canada	82–5037
Schwanberg International Inc	Canada	82–34712
Schwarz Pharma AG	Germany	82–4406
SCI Entertainment Group plc	United Kingdom	82–34659
SCMP Group Ltd	Bermuda	82–3327
Securitas AB	Sweden	82–34719
Sega Enterprises Ltd	Japan	82–3439
Sekisui House Ltd	Japan	82–5129
Sembcorp Industries Ltd	Singapore	82–5109
Shandong International Power Dev. Co. Ltd	China	82–4932
Shanghai Industrial Holdings Ltd	China	82–5160
Shangri La Asia Ltd	Bermuda	82–5006
Sharp Corp	Japan	82–1116
Shin Corp Public Co. Ltd	Thailand	82–3140
Shin Satellite Public Co. Ltd	Thailand	82–4527
Shiseido Company Ltd	Japan	82–3311
Shun Tak Holdings Ltd	Hong Kong	82–3357
SIA Engineering Co. Ltd	Singapore	82–5123
Siam Commercial Bank Public Co. Ltd	Thailand	82–4345
Sigma AB	Sweden	82–5228
Silverstone Corp Berhad	Malaysia	82–3319
Sime Darby Berhad	Malaysia	82–4968
Simsmetal Ltd	Australia	82–3838
Singapore Airport Terminal Services Ltd	Singapore	82–5117
Singapore Telecommunications Ltd	Singapore	82–3622
Singer N.V	Netherlands	82–34635
Skandia Insurance Co. Ltd	Sweden	82–5079
Skandinaviska Enskilda Banken	Sweden	82–3637
Sky Perfect Communications	Japan	82–5113
Slovnaft AS.	Slovak Republic	82–3721
Societe Generale	France	82–3501
Sogecable S.A	Spain	82–4981
Sons of Gwalia Ltd	Australia	82–1039
Southcorp Holdings Ltd	Australia	82–2692
Southern Pacific Petroleum N.L	Australia	82–353
Southern Telecommunications Co	Russia	82–4721
SPL Worldgroup B.V	Netherlands	82–34708

Company name	Country	File No.
St. George Bank Ltd	Australia	82–3809
St. Jude Resources Ltd	Canada	82–4014
Standard Chartered plc	United Kingdom	82–5188
Starlight International Holdings Ltd	Bermuda	82–3594
Starrex Mining Corp Ltd	Canada	82–3755
State Bank of India	India	82–4524
Stina Resources Ltd	Canada	82–2062
Stratabound Minerals Corp	Canada	82–3284
Studsvik AB	Sweden	82–5172
Sultan Minerals Inc	Canada	82–4741
Sumitomo Corp	Japan	82–34680
Sumitomo Metal Industries Ltd	Japan	82–3507
Sumitomo Mitsui Financial Group Inc.	Japan	82–4395
Sumitomo Trust & Banking Co. Ltd	Japan	82–4617
Sun Hung Kai Properties Ltd	Hong Kong	82–1755
Suns Group Ltd	Bermuda	82–4350
Suzano Petroquimica S.A	Brazil	82–34667
Svenska Cellulosa Aktiebolagot	Sweden	82–763
Svyazinform of the Region Samara	Russia	82–4889
Swire Pacific Ltd	Hong Kong	82–2184
Swiss Reinsurance Co	Switzerland	82–4248
Synex International Inc	Canada	82–862
Tabcorp Holdings Ltd	Australia	82–3841
Tai Cheung Holdings Ltd	Bermuda	82–3528
Taylor Nelson Sofres plc	United Kingdom	82–4668
Techmarine International plc	United Kingdom	82–34690
Technovision Systems	Canada	82–5069
Techtronic Industries Co. Ltd	Hong Kong	82–3648
Telefonica Data Peru S.A.A	Peru	82–34646
Telefonica Moviles Peru Holding S.A.A	Peru	82–34645
Telepizza	Spain	82–5001
Televisao Gaucha S.A	Brazil	82–4339
Tennyson Networks Ltd	Australia	82–5138
TFS	Switzerland	82–5095
Thai Farmers Bank Public Co. Ltd	Thailand	82–4922
Thiz Technology Group Ltd	Cayman Islands	82–34681
Thoughtshare Communications	Canada	82–2442
THUS Group plc	United Kingdom	82–34650
TNR Resources Ltd	Canada	82–4434
Tofas Turk Otomobil Fabrikasi AS	Turkey	82–3699
Tomorrow International Holdings Ltd	Bermuda	82–4256
T-Online International AG	Germany	82–5125
Toyota Industries Corporation	Japan	82–5112
Toys "R" Us Japan Ltd	Japan	82–5073
Tractebel Energia	Brazil	82–4760
Tradehold Ltd	South Africa	82–5238
Transportadora de Gas del Norte S.A	Argentina	82–3845
TravelSky Technology Ltd	China	82–34687
Trio Gold Corp	Canada	82–2127
Truly International Holdings	Cayman Islands	82–3700
Tsingtao Brewery Company Ltd	China	82–4021
TT&T Public Co. Ltd	Thailand	82–3744
Tullow Oil plc	United Kingdom	82–5202
Tyumen Air Company	Russia	82–4789
U.S. Commercial Corp. S.A. de C.V	Mexico	82–34669
UFJ Holdings Inc	Japan	82–5169
Unaxis Holding Inc	Switzerland	82–34643
UNI President Enterprises Co	Taiwan	82–3424
Unicredito Italiano	Italy	82–3185
United Bank for Africa plc	Nigeria	82–4804
United Grain Growers Ltd	Canada	82–34725
United Media Ltd	Canada	82–3859
United Overseas Bank Ltd	Singapore	82–2947
USA Video Interactive Corp	Canada	82–1601
Usinas Siderurgicas de Minas Gerais S.A	Brazil	82–3902
Valeo S.A	France	82–3668
Valerie Gold Resources Ltd	Canada	82–3339
Vanteck VRB Technology Corp	Canada	82–34688
Vedior N.V	Netherlands	82–4654
Velcro Industries. N.V	Neth. Ant.	82–145
Venfin Ltd	South Africa	82–3760
Ventracor Ltd	Australia	82–4630
Veos plc	United Kingdom	82–5220
Vermilion Resources Ltd	Canada	82–34704

Company name	Country	File No.
Viceroy Resource Corp	Canada	82–1193
Viktor Lenac Shipyard D.D. Rijeka	Croatia	82–5219
Village Roadshow Ltd	Australia	82–4513
Vinci	France	82–4781
VNU N.V	Netherlands	82–2876
Vodafone Panafon Hellenic Telecommunications	Greece	82–4969
Vodafone Telecel Comunicacoe Pessoais S.A	Portugal	82–4528
Vodatel Networks Holdings Ltd	Bermuda	82–5146
Vri Biomedical Ltd	Australia	82–34683
Vtech Holdings Ltd	Bermuda	82–3565
Wal Mart de Mexico S.A. de C.V	Mexico	82–4609
Wanadoo	France	82–5150
Washtec AG	Germany	82–4888
Westone Ventures Inc	Canada	82–4890
Wienerberger Baustoffindustrie AG	Austria	82–4316
William Hill plc	United Kingdom	82–34679
Windarra Minerals Ltd	Canada	82–561
Wolford AG	Austria	82–4403
Woodside Petroleum Ltd	Australia	82–2280

[FR Doc. 03–16005 Filed 6–24–03; 8:45 am]
BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48053; File No. SR–Amex–2003–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC and Amendment No. 1 Thereto Relating to a Marketing Fee To Be Imposed on Certain Transactions of Specialists and Registered Options Traders

June 17, 2003.

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 May 29, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the Amex has prepared. On June 16, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to reinstate a marketing fee to be imposed on certain transactions of specialists and registered options traders. The revenue generated by this fee would be used to compete with other exchanges for order flow in equity options traded on the Exchange.

The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

In July 2000, the Amex imposed a marketing fee of $0.40 per contract on the transactions of specialists and registered options traders in equity options. The Exchange collected the fee and allocated the funds to the specialists, who then used the funds to pay broker-dealers for orders they directed to the Exchange. In August 2001, the Exchange suspended the collection of the fee. At the time Amex suspended its marketing fee, some of the other options exchanges also suspended their marketing fee programs. Now, however, payment for order flow programs are again in place at each of the other options exchanges. The Amex believes that these programs operate to the competitive disadvantage of the Amex. The Exchange has traditionally opposed all forms of payment for order flow, especially SRO-sponsored programs,[5] believing, among other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Senior Vice-President and Deputy General Counsel, NASD, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 13, 2003 (''Amendment No. 1''). For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 16, 2003, when Amendment No. 1 was filed.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See, e.g.*, letter from James R. Jones, Chairman, Amex, to Jonathan Katz, Secretary, Commission dated December 8, 1992; Testimony of James R. Jones, Chairman, Amex, before the House Subcommittee on Telecommunications and Finance, dated, April 14, 1993; Answers to Post-Hearing Questions Relating to April 14, 1993, Hearing on the Future of the Stock Market, American Stock Exchange, Inc.; letter from Jules L. Winters, Chief Operating Officer, Amex, to Jonathan Katz, Secretary, Commission, dated December 21, 1993; letter from Jules L. Winters, Chief Operating Officer, Amex, to The Honorable Edward J. Markey, Chairman, and The Honorable Jack Fields, Ranking Republican Member, House Subcommittee on Telecommunications and Finance, dated April 7, 1994; letter from James F. Duffy, Executive Vice President and General Counsel, Amex, to Jonathan Katz, Secretary, Commission, dated January 12, 1995; letters from Richard F. Syron, Chairman & CEO, Amex, to The Honorable Thomas J. Bliley, Jr., Chairman, House Committee on Commerce, and The Honorable Jack Fields, Chairman, House Subcommittee on Telecommunications and Finance, dated August 4, 1995; letter from Thomas F. Ryan, Jr. President and COO, Amex, to Jonathan Katz, Secretary, Commission, dated February 1, 1996; letter from Thomas F. Ryan, Jr., President and COO, Amex, to Jonathan Katz, Secretary, Commission, dated February 26, 1997; letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated December 10, 2001; letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Jonathan Katz,

things, that they create the appearance of serious conflicts of interest between the business objectives of the self-regulatory organization and its statutory duties, and can compromise a broker's fiduciary obligation to achieve best execution of its customers' orders. However, given the institution of payment for order flow programs at all other options exchanges and the continuation of payment for order flow programs by some specialist and market making organizations, the Amex believes that it may be necessary to re-institute its payment for order flow program in order to respond to these competitive pressures. Notwithstanding the Amex's decision to reinstate a payment for order flow program, the Amex continues to urge the Commission to ban all forms of payment for order flow.

After thorough consideration, the Exchange has determined to reinstate its marketing fee program in a modified form effective June 2, 2003. The revenue generated by these marketing fees would be used to compete for order flow in equity options listed for trading on the Exchange. The fee would be imposed at a rate of $.40 per contract on specialist and registered option trader transactions.

The Exchange has determined to collect the marketing fee on only those specialist and registered option trader transactions involving customer orders from firms that accept payment for directing their orders to the Exchange (''payment-accepting firms''). In addition, the specialists would be solely responsible for negotiating payment for order flow arrangements with payment-accepting firms. Specialists would not be required to negotiate with any payment-accepting firms. Accordingly, the marketing fee would be assessed only on those specialist and registered option trader transactions resulting from orders from customers of payment-accepting firms with whom a specialist has negotiated a payment for order flow arrangement. If a specialist has negotiated a payment to a firm of less than $.40 per contract, the difference between $.40 and the actual payment would be refunded to the specialist and the registered options traders. In addition, the marketing fee would be assessed only on transactions of specialists and registered option traders with orders from customers of payment-accepting firms that are for 200 contracts or less.

The Exchange would not have any role with respect to the negotiations between specialists and payment-accepting firms. Rather, the Exchange proposes to collect and administer the payment of the fee collected on those transactions for which the specialist has advised the Exchange that it has negotiated with a payment-accepting firm to pay for the firm's order flow. The Exchange would provide general administrative support for the program; in particular, the Exchange would keep track of the number of qualified orders sent by a payment-accepting firm, bill specialists and registered options traders through their clearing firms, and issue payments to payment-accepting firms to reflect the collection and payment of the marketing fee. All of the funds generated by the fee would be used only for the purpose of paying the firms for order flow they send to the Exchange.

According to Amex, it is important to note that although specialist and registered option trader transactions resulting from customer orders from firms that do not accept payment for their orders are not subject to the fee, Exchange specialists and registered options traders would have no way of identifying prior to execution whether a particular order is from a payment-accepting firm, or from a firm that does not accept payment for their order flow.

In connection with the reinstitution of a payment for order flow program that is funded by an Amex marketing fee, the Exchange will issue an Information Circular to its members that emphasizes the disclosure and best execution obligations of members who accept such payment.

The Exchange believes that the marketing fee program would provide for the equitable allocation of a reasonable fee among Exchange members, and that it is designed to enable the Exchange to compete with other markets in attracting order flow in multiply traded options from firms that include payment as a factor in their order-routing decisions. Because the marketing fee would be collected only on those transactions resulting from customer orders of a payment-accepting firm that the specialist has independently negotiated with to pay for that firm's order flow, the Amex believes that there would be a direct and fair correlation between those members who fund the marketing fee program and those who receive the benefits of the program.

The Amex states that, as the Commission knows, it strenuously objects to all forms of payment for order flow because it believes that they create an inappropriate and unnecessary appearance of conflict of interest between the business interest of receiving payment for order flow and the fiduciary duty to achieve best execution. The Amex believes that SRO-sponsored payment for order flow programs are particularly inappropriate because, in its view, the self-regulatory organization's statutory duty to oversee and enforce its members' best execution obligations with respect to their order-routing decisions, while simultaneously paying for the members' order flow, creates an obvious appearance of a conflict of interest. Nevertheless, the Exchange believes that this rule filing is consistent with the Act because it would allow the Exchange to maintain its competitive position in relation to other self-regulatory organizations that have in place either a Commission-approved payment for order flow program [6] or programs that have otherwise become effective under the Act. In addition, the Amex believes that the proposed marketing fee would serve to enhance the competitiveness of the Amex and its members and that this proposal therefore is consistent with and furthers the objectives of the Act, including specifically Section 6(b)(5) thereof,[7] which requires the rules of exchanges to be designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and Section 11A(a)(1) thereof,[8] which reflects the findings of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers and among exchange markets.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of

Secretary, Commission, dated October 28, 2002; letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Chairman Harvey L. Pitt, Chairman, Commission, and Cynthia A. Glassman, Harvey J. Goldschmid, Paul S. Atkins, and Roel Campos, Commissioners, Commission, dated November 19, 2002; letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Jonathan Katz, Secretary, Commission, dated November 19, 2002; letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Chairman Harvey L. Pitt, Chairman, Commission, and Cynthia A. Glassman, Harvey J. Goldschmid, Paul S. Atkins, and Roel Campos, Commissioners, Commission, dated January 31, 2003; letter from Salvatore F. Sodano, Chairman & Chief Executive Officer, Amex, to Harvey L. Pitt, Chairman, Commission, dated February 6, 2003; and letter from Salvatore F. Sodano, Chairman & Chief Executive Officer, Amex, to Harvey L. Pitt, Chairman, Commission, dated February 10, 2003.

[6] *See* Securities Exchange Act Release No. 43833 (January 10, 2001) 66 FR 7822 (January 25, 2001).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

the Act,[9] in general, and with Section 6(b)(4)[10] in particular, in that it would provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Amex neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Amex, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b-4(f)(2) thereunder.[12] At any time within 60 days after the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate the 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–50 and should be submitted by July 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16006 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48041; File No. SR–AMEX–2003–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Mandatory Continuing Education for All Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms

June 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. On May 21, 2003, the Amex amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) to ensure that Floor members are regularly apprised of critical regulatory and operational issues affecting the Exchange and that all other individuals affiliated with members or member organizations, and necessary for the transaction of business on the Amex trading floor, demonstrate a basic understanding of the auction market, as well as an understanding of the critical regulatory and operational issues affecting the Exchange in particular, and the securities industry in general. Below is the text of the proposed rule change. Proposed new text is *italicized.*

* * * * *

Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms.

Rule 359. All regular and options principal members, limited trading permit holders, their clerks (post, booth and DK) active in the business of the Exchange trading floor will be required to participate in the Exchange-sponsored mandatory continuing education program to be conducted annually and at such other times as the Exchange deems appropriate. Any individual who fails to attend a mandatory continuing education program will be subject to disciplinary action under the Exchange's Minor Rule Violation Fine System.

Additionally, all floor clerks, with no previous trading floor experience (other than those performing strictly ministerial functions) who are employed after the adoption of this rule will be subject to the training and are required to pass a qualifying exam; and all specialist clerks, with no previous trading floor experience, who are employed after the adoption of this rule, will be subject to additional training and an additional qualifying exam.

The Exchange will levy a per program fee as indicated in its Schedule of Fees for each participant (members and clerks) in any of the continuing education and testing programs.

* * * * *

Amex Price List

Member Fees

I. Membership Dues

No change.

II. Initiation Fees

No change.

III. Membership Fees

No change.

IV. Examination Fees

No change.

V. Continuing Education Fees

$50.00 per participant/per year

Notes: No change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Ivonne L. Natal, Associate General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 20, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange replaced the original filing in its entirety.

Minor Rule Violation Fine System

Part 1

General Rule Violations

Rule 590. (a) through (f)—No change.

(g) The following is a list of the rule violations and applicable fines that may be imposed by the Exchange's Enforcement Department pursuant to Part 1 of this Rule.

1.–13. No change.

14. Failure to attend mandatory continuing education as required by Rule 359.

(h) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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

In order to protect public customers and maintain its competitive position, the Exchange believes that it needs to ensure that all individuals active in the transaction of business on the Amex trading floor demonstrate a basic understanding of the auction market. While an examination is required before an Exchange member may conduct business on the Floor of the Exchange, no such initial requirement currently exists for those members' clerks who perform a critical role in the conduct of that business. For these same reasons, and particularly in this age of rapid and continuous change and diversity in innovative securities products, the Exchange states that it needs to ensure that individuals on the Amex trading floor continue to possess this basic understanding of the auction market, as well as an understanding of the critical regulatory and operational issues affecting the Exchange in particular, and the securities industry in general.

The continuing education needs of the securities industry were studied in 1993 by the Securities Industry Task Force on Continuing Education. The Task Force released a report recommending mandatory continuing education for registered representatives. In 1999, the New York Stock Exchange (the ''NYSE'') instituted a semiannual program of continuing education for its floor members. That same year, with SEC approval, the NYSE amended its Rule 35 implementing training and qualification requirements for floor employees of members or member organizations, including a new Trading Assistant Qualification Examination (Series 25). The NYSE also required that Front Line Specialist Clerk candidates submit to a six-month, specialist-supervised, on-the-job training period and, thereafter, pass the Series 21 examination, before being permitted to function as a Front Line Specialist Clerk. Most recently, in June 2000, the SEC approved amendments to NYSE Rule 103A making mandatory the periodic (*i.e.*, semiannual ''and at such other times as may be necessary'') training of all NYSE floor members.

The Exchange believes that mandatory continuing education should be an integral part of an efficient trading floor operation. Consequently, we are proposing that newly hired floor clerks (other than those performing strictly ministerial functions) with no previous floor experience, be tested within a three-month on-the-job training period to ensure that they can properly perform their functions on the trading floor. The training period should be sufficient for an individual to learn the basic systems and regulations needed to function effectively as a member firm clerk.

The Exchange further proposes that an additional level of training and testing be required for newly-hired specialist clerks, with no previous experience as specialists or specialist clerks. In order to qualify as a specialist clerk, a candidate must, first, have either floor experience or be subject to the training and exam requirement of a floor clerk. In addition, a specialist clerk candidate will be required to have on-the-job and classroom training specifically related to the job of specialist clerk. The specialist clerk training would not exceed three months, which could be concurrent with or consecutive to any floor clerk training required by the candidate.

Continuing education for members and their floor employees is both necessary and beneficial. The needs of the Amex, however, are, in some ways, unique. Accordingly, the Exchange is proposing an annual, mandatory continuing education program for members and their employees. However, Exchange staff would be authorized to schedule additional mandatory educational sessions at such other times as it deems necessary and/or appropriate. These additional mandatory sessions could be of a general nature for all members and member firm personnel, or they could be tailored to address the needs of a specific group, *e.g.*, as with the introduction of a new product or in a specific situation where only certain members could effect transactions and for which particular expertise is required.

The Exchange proposes to include the failure to attend a mandatory continuing education session in the General Rule Violations section of the Exchange's Minor Rule Violation Fine Systems, under which a fine may be imposed by the Exchange's Enforcement Department for failure to attend a mandatory continuing education session.

In order to finance the development and implementation of an effective continuing education and testing program, the Exchange proposes to levy an annual fee for each participant (members and clerks) in any of the programs. On approval of Amex Rule 359, the fee will be set at $50. This fee will be incorporated in the Amex Fee Schedule (Price List) and may be changed from time to time in the same manner as other Amex fees are revised.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [4] in general and furthers the objectives of sections 6(b)(4) and (5) in particular,[5] in that it is designed to (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and (ii) 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 proposed rule change is designed to ensure that Floor members are regularly apprised of critical regulatory and operational issues affecting the Exchange and that all other individuals affiliated with members and member organizations, and necessary for the transaction of business on the Exchange trading floor, demonstrate a basic understanding of the auction market as well as the critical regulatory and operational issues affecting the Exchange in particular, and the securities industry in general.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

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

The Exchange has 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–2003–06 and should be submitted by July 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16011 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48059; File No. SR–CBOE–2003–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Disclaimers for Index Option Reporting Authorities

June 18, 2003.

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 May 16, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the effect of certain disclaimers provided by the Exchange on behalf of index reporting authorities under CBOE Rule 24.14 (''Disclaimers''). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Chapter XXIV

Index Options

Rule 24.14. Disclaimers

No reporting authority with respect to any index underlying an option traded on the Exchange, no affiliate of such reporting authority (each such reporting authority and its affiliates are referred to collectively as the ''Reporting Authority''), and no other entity identified in this Rule makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract based thereon or for any other purpose. The Reporting Authority or any other entity identified in this Rule shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority or any other entity identified in this Rule does not guarantee the accuracy or completeness of such index, and opening, intra-day or closing value therefor, or any data included therein or related thereto. The Reporting Authority or any other entity identified in this Rule hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefor, any data included therein or relating thereto, or any option contract based thereon. The Reporting Authority or any other entity identified in this Rule shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract based thereon or arising out of any errors or delays in calculating or disseminating such index. The foregoing disclaimers shall apply to Standard & Poor's, a division of The McGraw-Hill Companies, Inc. (''S&P'') in respect to the S&P Indexes, [S&P and Barra, Inc. in respect to the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index,]Frank Russell Company in respect to the Russell *Indexes* [2000 Index], [LIFFE Administration and Management in respect to the FT–SE 100 Index,]The NASDAQ Stock Market, Inc. in respect to the Nasdaq [100]Index*es*, Morgan Stanley *Dean Witter* & Co. Incorporated in respect of the Morgan Stanley [Multinational Company]Index*es*, Dow Jones and Company, Inc. in respect to the Dow Jones Averages and *any other*[the] Dow Jones [Equity REIT]Index*es,* [Lipper Analytical Services, Inc., Salomon Brothers, Inc. in respect to the Lipper-Salomon Indexes, and]Goldman, Sachs & Co. in respect to the Goldman Sachs *Indexes* [Technology Indexes,*]; to the foregoing Reporting Authorities in respect to any other indexes for which they act as the designated Reporting Authority; [,] to* the Exchange in respect to the indexes

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for which it is the designated R[r]eporting A[a]uthority;[,] and *to* any other [index] *R*[r]eporting *A*[a]uthority in respect to any index for which it acts as such.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE currently lists and trades options on various indexes. Each index has a designated reporting authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index.[3] CBOE Rule 24.14 (the ''Rule'') sets forth certain disclaimers that are applicable to each reporting authority and its affiliates (collectively ''Reporting Authority'') with regard to those index options that are listed on or traded at the CBOE. For example, the Rule provides that no Reporting Authority makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract based thereon or for any other purpose.

Under CBOE Rule 24.14, certain indexes and their respective Reporting Authorities are specified by name as being covered by the disclaimer. However, the specification of certain Reporting Authorities or certain indexes within the Rule does not imply that a Reporting Authority or an index must be specified in the Rule to be covered by the disclaimer. The Rule currently contains a provision that makes the Rule applicable to all Reporting Authorities in respect to any index for which it acts as such, whether or not that Reporting Authority or the index is specified in the Rule. Specifically, the Rule provides in part that it applies to any other index Reporting Authority in respect to any index for which it acts as such.

The CBOE proposes to clarify the Rule by providing language that expressly states that, where a Reporting Authority is specified in the Rule in relation to a specified index or indexes that is traded on the Exchange, the Rule also applies to that Reporting Authority in relation to indexes that are not specified in the Rule. The Exchange believes that this should clarify the purpose and effect of CBOE Rule 24.14.

Specifically, the proposed rule change will provide that the disclaimer will also apply to designated Reporting Authorities not mentioned in the Rule with respect to any other indexes that are traded on the Exchange. This added provision does not preclude the Exchange from adding specific Reporting Authorities or specific indexes to CBOE Rule 24.14 in the future.

Additionally, the CBOE proposes to delete references to certain indexes that are no longer traded on the CBOE, to update changes in company names where appropriate, and to refer to all indexes related to certain Reporting Authorities that are specified within the rule text and that trade on the CBOE; specifically, by referencing the S&P indexes, Russell indexes, Morgan Stanley Dean Witter indexes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,[4] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act[5] and Rule 19b–4 (f)(1) thereunder.[6] 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to the File No. SR–CBOE–2003–21 and should be submitted by July 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16010 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* CBOE Rule 24.1(h) (defining Reporting Authority).

[4] 15 U.S.C. 78s(f)(b).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48056; File No. SR–NASD–2003–78]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6230 To Reduce TRACE Reporting Period

June 18, 2003.

I. Introduction

On May 2, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Rule 6230 to reduce the Trade Reporting and Compliance Engine (''TRACE'') reporting period from 75 minutes to 45 minutes. Notice of the proposed rule change was published for comment in the **Federal Register** on May 20, 2003.[3] The Commission received one comment letter regarding the proposal.[4] This order grants accelerated approval to the proposed rule change.

II. Background

On January 23, 2001, the Commission approved the TRACE Rules to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System (''FIPS'').[5] Subsequently, on March 5, 2001, the Commission approved amendments to the TRACE Rules requiring trade reports in transactions between two NASD members to be filed by each member.[6] In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE Rules had become effective on filing.[7] On June 28, 2002, the Commission approved a proposed rule change to establish fees for the use of TRACE on a pilot basis for six months,[8] and also approved proposed amendments to the TRACE Rules to make technical changes to the TRACE Rules and clarify certain provisions of those Rules prior to implementation of TRACE.[9]

The TRACE Rules became effective on July 1, 2002. On that day, members began to report transactions in TRACE-eligible securities, and the TRACE system began the dissemination of certain reported information. On November 22, 2002, the Commission issued a notice stating that NASD was reducing certain TRACE fees for the fourth quarter of 2002.[10] On December 19, 2002, the Commission issued a notice stating that an extension of the pilot program for TRACE fees to February 28, 2003 and a modification of the pilot effective January 1, 2003 had become effective on filing.[11]

On January 31, 2003, the Commission approved a proposed rule change relating to increasing dissemination of debt securities transaction information under the TRACE rules.[12] On March 4, 2003, the Commission issued a notice stating that another extension of the pilot program for TRACE fees to June 30, 2003 and a modification of the pilot had become effective on filing.[13] On March 25, 2003, the Commission issued a notice of filing and immediate effectiveness of a proposed rule change by NASD to disseminate up to thirty additional corporate bonds under the TRACE rules.[14]

III. Description of the Proposal

NASD Rule 6230(a) currently requires a member that is a party to a transaction in a TRACE-eligible security to report the transaction information to TRACE within 75 minutes of the time of execution.[15]

NASD is proposing to reduce the period to report from 75 minutes to 45 minutes. In new Rule 6230(a), the general requirement to report transaction information within 75 minutes of the time of execution is restated as 45 minutes. In addition, NASD is proposing to amend the next-day reporting exceptions in Rules 6230(a)(1) through (4) to require that the report be filed within 45 minutes of the time the TRACE system opens instead of the current 75 minutes. These amendments would go into effect October 1, 2003. The proposal is discussed in greater detail in the Commission's notice soliciting public comment on the proposal.[16]

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of section 15A(b)(6) of the Act.[17] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.[18]

The Commission believes that reducing the reporting period from 75 minutes to 45 minutes would result in important trade information reaching the market in a timelier manner, thus improving price transparency under TRACE. The Commission also believes that the proposed rule change will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 47856 (May 14, 2003), 68 FR 27605.

[4] *See* letter from Michele C. David, Vice President and Assistant General Counsel. The Bond Market Association (''TBMA''), to Jonathan G. Katz, Secretary, Commission, dated June 10, 2003 (''TBMA's Letter''). TBMA's Letter is described in Section IV, *infra*.

[5] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001), (File No. SR–NASD–1999–65). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

[6] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[7] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[8] *See* Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR–NASD–2002–63).

[9] *See* Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (File No. SR–NASD–2002–46).

[10] *See* Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (SR–NASD–2002–167).

[11] *See* Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR–NASD–2002–176).

[12] *See* Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File NO. SR–NASD–2002–174).

[13] *See* Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003), (File No. SR–NASD–2003–25).

[14] *See* Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003) (File No. SR–NASD–2003–41).

[15] Limited exceptions to the general requirement are stated in Rule 6230(a)(1) through (4), which provide for reporting a transaction the next business day that the TRACE system is open in certain circumstances. Specifically, in Rule 6230(a)(1), a member currently *may elect* to report a transaction the next business day that the TRACE system is open at any time within 75 minutes after the TRACE system opens, if the member executed the trade the prior business day less than 75 minutes before the TRACE system closed. (Currently, on a business day, the TRACE system is open from 8 a.m. Eastern Time to 6:30 p.m. Eastern Time to receive reports.) In Rule 6230(a)(2) through (4), members are directed how to report trades that occur (1) after TRACE system hours, (2) before TRACE system hours, or (3) on a weekend or a holiday. In each case, the member must report the transaction the next business day that the TRACE system is open within 75 minutes of the opening.

[16] *See supra,* note 3.

[17] 15 U.S.C. 78o–3(b)(6).

[18] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

provide regulators with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices. In addition, the Commission believes that this reduction is an important step in achieving the ultimate goal of reducing the reporting period to 15 minutes after the industry acquires greater experience with reporting.[19]

As previously noted, the Commission received one comment letter from TBMA on the proposed rule change.[20] TBMA strongly supports the proposal because they believe it will provide timelier and therefore more useful trade information to investors and other market participants that will support and increase the efficiency of the markets for the bonds that are subject to the transparency requirements. TBMA's Letter also noted that they support further efforts to enhance the timeliness of trade reports contingent on further efforts to develop reporting mechanisms that make such efforts feasible. The Commission supports NASD's goals for increasing timeliness of trade reporting and believes that setting goals may provide incentive for market participants to enhance reporting mechanisms if necessary to facilitate those goals. The Commission believes the current reduction '' from 75 minutes to 45 minutes—is an important step toward achieving the NASD's goal of 15-minute reporting.

TBMA's Letter also stated that it should be clear that narrowing the time requirements for reporting trade information does not presuppose that all information reported should be disseminated, or that all information that is disseminated should be disseminated on a ''real-time'' basis. The Commission agrees that the reduction in the reporting interval in this proposal does not presuppose real-time dissemination of reported transaction information on all corporate bonds. The issues of further reductions in reporting intervals and expanded dissemination are expected to be addressed in the context of future filings with the Commission, but those issues are not before the Commission at this time.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval will allow member firms to receive prior notification, by several months, of the deadline to implement the reduced reporting period on October 1, 2003.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[22], that the proposed rule change (SR–NASD–2003–78), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15974 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

[19] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65).

[20] *See supra*, note 4.

[21] 15 U.S.C. 78s(b)(2).

[22] *Id.*

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48061; File No. SR–NASD–2003–93]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Trading Activity Fee To Adjust the Rates for Covered Equity Securities

June 19, 2003.

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 11, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD proposes to amend its Trading Activity Fee (''TAF''). The NASD is amending the TAF to adjust the rates for covered equity securities. In addition, the NASD is renumbering certain subsections included in Section 1. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to NASD By-Laws

* * * * *

Section 1—Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

[(i)]*(A)* All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

[(ii)]*(B)* All other equity securities traded otherwise than on an exchange; and

[(iii)]*(C)* All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

[(i)]*(A)* Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

[(ii)]*(B)* Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

[(iii)]*(C)* The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

[(iv)]*(D)* The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

[(v)]*(E)* Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3–1 and any approved plan filed thereunder;

[(vi)]*(F)* Proprietary transactions by a firm that is a member of both NASD and a national securities exchange, effected in its capacity as an exchange specialist or market maker, that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1–1(T)(a) thereunder; however this exemption does not apply to other transactions permitted by Section 11(a) such as bona fide arbitrage or hedge transactions;

[(vii)]*(G)* Transactions by a firm that is a floor based broker and that is a member of both NASD and a national

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

securities exchange provided that the floor based broker qualifies for exemption from NASD membership under Exchange Act Rule 15b9–1;

[(viii)]*(H)* Transactions in conventional options;

[(ix)]*(I)* Transactions in options and futures involving narrow and broad based indexes;

[(x)]*(J)* Transactions in security futures held in futures accounts; and

[(xi)]*(K)* Transactions in exchange listed options effected by a member when NASD is not the designated options examining authority for that member. NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates *

[(i)]*(A)* Each member shall pay to NASD a fee per share for each sale of a covered equity security.

[(ii)]*(B)* Each member shall pay to NASD a fee per contract for each sale of an option.

[(iii)]*(C)* Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD [$0.00005] *$0.0001* per share for each sale of a covered equity security, with a maximum charge of [$5] *$10* per trade; $0.002 per contract for each sale of an option; and $0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ([$0.00005] *$0.0001* for covered equity securities, $0.002 for covered option contracts, or $0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

(4) No Change.

(c) through (d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 30, 2003, the Commission approved the last component of a series of changes to NASD's member regulatory fee structure. Under the new fee structure, there are now three types of fees and assessments used to fund NASD's member regulatory activities: (1) Trading Activity Fee (''TAF''); [3] (2) Personnel Assessment; and (3) Gross Income Assessment.[4] These fees, assessed upon and paid by member firms, are used by NASD to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policy making, rulemaking, and enforcement activities. The new member regulatory fee structure was designed to be revenue neutral to NASD and to better align NASD's regulatory fees with its functions, efforts, and costs.

Today, NASD is filing a proposal to adjust the TAF rate, and related maximum charge and minimum price exceptions, for equity securities only. NASD has been collecting the TAF for transactions effected after October 1, 2002 on a pilot basis, and has determined that the equity rate needs to be increased to ensure adequate funding levels for its member regulatory program. Therefore, NASD is proposing that the TAF be increased from 0.00005 per share to 0.0001 per share for covered equity securities, effective the first day of the month following Commission approval.

The proposed rate change is driven by lower than expected TAF revenues, not increased or unexpected member regulatory costs. NASD originally had proposed a rate of 0.0001 per share for equity securities (announced on Sept. 27, 2002 and published on NASD's Web site at *http://www.nasd.com/trading_fee2.asp* but after informal feedback from the membership about the level of volume meeting the definition of ''covered equity security,'' decided to reduce the rate to 0.00005.[5] Six months'' experience with the TAF has demonstrated that the initially proposed rate is more accurate to ensure revenue neutrality and adequate funding.

Although the current proposed rate change is driven by the need for NASD to remain revenue neutral in its transition from the old member regulatory funding structure, consistent with its stated policy, NASD periodically will analyze rates, volumes, and regulatory responsibilities to ensure adequate funding levels for its member regulatory programs.[6] NASD also will perform an analysis for the annual Personnel Assessment and Gross Income Assessment, to ensure adequate contributions from each component fee, as well as adequate levels of funding overall. In addition, NASD previously stated its intent to reduce the percentage that the TAF contributes to the overall funding structure in 2004 and again in 2005 (increasing the percentage funded by the PA and holding the GIA percentage static). NASD remains committed to that program, and should regulatory costs and market volumes remain constant, fee levels for 2004 could be expected to drop by approximately 20%. Of course, NASD will analyze all relevant factors prior to making that filing.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. The TAF is objectively allocated to NASD members. Moreover, the NASD believes the level of the fee is reasonable because it relates directly to the recovery of the costs of regulating members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34012 (June 6, 2003) (approval order).

[4] Securities Exchange Act Release No. 47106 (December 30, 2002), 68 FR 819 (January 7, 2003) (approval order).

[5] *See* Securities Exchange Act Release Nos. 46818 (Nov. 12, 2002), 67 FR 69782 (Nov. 19, 2002) (approving SR–NASD–2002–147) and 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR–NASD–2002–148).

[6] Specifically, NASD stated in the text of the TAF rule language that it will ''periodically review these revenues in conjunction with these costs to determine the applicable rate.'' NASD By-Laws, Schedule A, Section 1(a).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the current proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–93 and should be submitted by July 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16007 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48060; File No. SR–NYSE–2003–11]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the NYSE Broker Volume Web Service

June 19, 2003.

On April 22, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees to make NYSE Broker Volume information available via a new web-based service (''NYSE Broker Volume Web Service''). The proposal was published for comment in the **Federal Register** on May 14, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with sections 6(b)(4) and (5) of the Act.[6] Section 6(b)(4) [7] requires the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the exchange operates or controls. Section 6(b)(5) [8] requires that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with these Sections of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2003–11) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16008 Filed 6–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47813 (May 8, 2003), 68 FR 25923.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4352]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC), Subcommittee on the Prevention of Marine Pollution, will conduct an open meeting at 9:30 a.m. on Tuesday, July 8, 2003, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 49th Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) to be held at IMO Headquarters in London, England from July 14 to 18, 2003.

The primary matters to be considered include:

- Harmful aquatic organisms in ballast water;
- Recycling of ships;
- Prevention of air pollution from ships;
- Consideration and adoption of amendments to mandatory instruments;
- Harmful anti-fouling systems for ships;
- Implementation of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) Convention and the OPRC-Hazardous Noxious Substance Protocol and relevant conference resolutions;
- Identification and protection of Special Areas and Particular Sensitive Sea Areas;
- Inadequacy of reception facilities;
- Promotion of implementation and enforcement of the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and related instruments;

- Technical co-operation program;
- Interpretation and amendments of MARPOL 73/78 and related instruments;
- Future role of formal safety assessment and human element issues; and
- Work program of the Committee and subsidiary bodies.

Please note that hard copies of documents associated with MEPC 49 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD-ROM. To requests documents please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.*

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Ensign Mary Weston, Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1600, Washington, DC 20593–0001 or by calling (202) 267–2079.

Dated: June 9, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–16081 Filed 6–24–03; 8:45 am]

BILLING CODE 4710–D7–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than August 25, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0005.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Abstract: The collection of information is due to the railroad hours of service regulations set forth in 49 CFR part 228 which require railroads to collect the hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (subpart C of 49 CFR part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of sections 228.101, 228.103, and 228.105.

Affected Public: Businesses.

Respondent Universe: 632 railroads.

Frequency of Submission: On occasion; monthly.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
228.11—Hours of duty records	632 railroads	27,375,000 records	2 min/10 min	2,962,500	$103,687,500
228.17—Dispatchers of train movements.	150 dispatch offices	54,750 records	6 hours	328,500	11,497,500
228.19—Monthly reports of excess service.	300 railroads	1,800 reports	2 hours	3,600	126,000
228.103—Construction of employee sleeping quarters.	632 railroads	1 petition	16 hours	16	560
49 U.S.C. 521102—Hours of service act.	12 railroads	12 petitions	10 hours	120	$4,200

Total Responses: 27,431,563.

Estimated Total Annual Burden: 3,294,736 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 18, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–16093 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transit Improvements in the Metro South Study Area of Metropolitan St. Louis, MO

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA), the East-West Gateway Coordinating Council, the Bi-State Development Agency doing business as Metro, and the Missouri Department of Transportation (DOT) intend to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations for proposed transportation improvements in the Metro South Study Area of metropolitan St. Louis County, Missouri. The project co-sponsors include the East-West Gateway Coordinating Council (EWGCC) which is the metropolitan planning organization (MPO) responsible for transportation planning in the St. Louis metropolitan area, Metro which is the transit agency that operates the MetroLink light rail system and the bus system in the St. Louis metropolitan area, and the Missouri DOT.

This notice is being published to notify interested agencies and the general public about the proposed action and to invite participation in the study. Scoping will be accomplished through correspondence and meetings with interested persons, organizations, and federal, state, and local agencies. A public scoping meeting and an interagency scoping meeting are currently planned.

The Metro South Study Area is bounded by the River Des Peres on the north, the Mississippi River on the east, the Meramec River on the south, and various streets including Gravois, Sappington, Watson, and Edgar on the west. Within this study area, transit improvements alternatives including light-rail transit alternatives, a transportation systems management (TSM) alternative, an enhanced bus system alternative, a no-action alternative and any additional reasonable alternatives emerging from the scoping process will be evaluated.

DATES: The public scoping meeting is scheduled for July 23, 2003 from 4 to 7 p.m. at the address given under **ADDRESSES.** The interagency scoping meeting is scheduled for July 25, 2003. Written comments on the scope of the study must be received at the EWGCC by August 8, 2003. *See* **ADDRESSES** for mailing information.

ADDRESSES: Scoping Meetings: The public scoping meeting on July 23, 2003 will be held in the gymnasium of Cor Jesu Academy, 10230 Gravois Road, St. Louis, Missouri 63123. The meeting will take place from 4 to 7 p.m. Oral and written comments on the scope of the study may be given at the meeting. The meeting site is wheelchair-accessible. Any person who requires language interpretation or special communication accommodations is asked to contact the project's public-participation coordinator, Laurna Godwin of Vector Communications at (314) 621–5566 prior to the meeting. Federal, state, and local agencies will be notified individually about the location of the interagency scoping meeting.

Written Comments: Written comments on the scope of the study may be sent to Mr. Bob Innis, Transportation Corridor Improvement Group, East-West Gateway Coordinating Council, 10 Stadium Plaza, St. Louis, MO 63102; or by e-mail to *bob.innis@ewgateway.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Joan Roeseler, Director of Planning and Program Development, FTA Region 7, 901 Locust Street, Kansas City, Missouri 64106; Telephone: (816) 329–3936.

SUPPLEMENTARY INFORMATION:

I. Scoping

Scoping information material will be available at the meetings and may also be obtained by contacting Mr. Bob Innis at his address in **ADDRESSES** above or by telephone at (314) 982–1400, Extension 1767. Scoping information will also be available on the Internet at *http://www.metrosouthstudy.org* FTA, EWGCC, Metro, and the Missouri DOT invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in articulating the purpose and need for the proposed transit improvements, defining the transit alternatives to be evaluated, and identifying social, economic, or environmental issues related to the alternatives. During the scoping process, comments should focus on specific social, economic, or environmental issues to be evaluated and on suggesting alternatives that may be less costly or have fewer environmental impacts while achieving similar transportation objectives.

II. Planning History and Process

A multimodal major investment study entitled the Cross-County Corridor

Major Transportation Investment Analysis (MTIA) was carried out in 1995–1997. This study examined transportation problems and identified potential solutions at a conceptual level

for a large portion of St. Louis County, including the Metro South Study Area, that is the subject of the planned EIS. At the conclusion of the MTIA, the EWGCC selected a MetroLink light rail transit (LRT) extension as the locally preferred alternative (LPA) in the Metro South Study Area. That LRT extension was planned to extend along a corridor from Lansdowne Avenue south along the Burlington-Northern & Santa Fe Railroad right-of-way past Lindbergh Boulevard, across I–55 to the South County Shopping Center near I–255/270, and then across I–255 and south along the I–55 right-of-way terminating south-east of the I–55 and Butler Hill Road interchange.

However, conditions in the Metro South Study Area have changed since the MTIA was completed in early 1997. For example, a number of large new commercial developments have recently opened or are currently under construction. Therefore, at the outset of the NEPA process, the state and local sponsoring agencies will conduct a Planning Alternatives Analysis to re-establish the project purpose and need consistent with the land use and transportation goals and objectives in the Legacy 2025: Long Range Plan initiative, and to re-examine the alternative transit modes and general alignments that would serve the transportation purpose and need in the Metro South Study Area.

III. Alternatives

The alternatives to be considered currently consist of the No-Action Alternative, Light Rail Transit (LRT) Alternatives, a TSM Alternative, and an Enhanced Bus System Alternative. Any additional reasonable alternatives suggested during scoping that reduce costs or impacts while still serving the transportation purpose and need will also be considered. The LRT Alternatives consist of the LPA from the MTIA described above, and alignment variations designed to serve new developments or to reduce impacts. The No-Action Alternative is the continuation of existing bus service policies in the study area. Under the No-Action Alternative, increases in service would track with increases in demand due to population or employment growth in the area, in accordance with current service policies. The TSM Alternative consists of low-cost mobility improvements that attempt to serve the project purpose and need without building a transit guideway. The Enhanced Bus System Alternative provides additional bus improvements exceeding those of the TSM in cost and possibly including segments of busway or dedicated lanes.

IV. Probable Effects and Potential Impacts for Analysis

At the present time, none of the usual impact categories associated with transit projects can be ruled out. Therefore the study will evaluate all social, economic, and environmental impacts of the alternatives, including land use, zoning, and economic development; cumulative land use impact, land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; neighborhoods and communities; environmental justice; air quality; noise and vibration; contaminated sites; ecosystems; water resources; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

Following the scoping process, the alternatives will be evaluated in a Planning Alternatives Analysis that results in the identification of a locally preferred alternative (LPA) by EWGCC. FTA and the project sponsors will then decide which of the alternatives may be eliminated from further review on the basis of the public and agency comments on the Planning Alternatives Analysis and which alternatives must be carried forward for detailed review in the EIS. The alternatives reviewed in the EIS will include, at a minimum, the No-Action Alternative and the LPA. Scoping activities are being initiated at the outset of the Planning Alternatives Analysis to maximize the opportunity for public involvement in the consideration of transit alternatives and reaching decisions about the transportation investments that will be advanced into the EIS for detailed evaluation.

In accordance with FTA policy, all Federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the conformity requirements of the Clean Air Act, section 404 of the Clean Water Act, Executive Orders 11988, 11990 and 12898 regarding floodplains, wetlands, and environmental justice, respectively, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: June 19, 2003.

Mokhtee Ahmad,

Regional Administrator, Federal Transit Administration, Region VII.

[FR Doc. 03–16092 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 23, 2002 (67 FR 65184).

DATES: Comments must be submitted on or before July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph P. Scott at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–8525. 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 569 & 574, Tires and Rims Labeling.

OMB Control Number: 2127–0503.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: New tire manufacturers and rim manufacturers must label tires and rims that are used on motor vehicles. Tire manufactures are required to maintain records of tire purchasers. Regulations specify the methods by which retreaders and retreaded tire brand name owners shall identify tires for use on motor vehicles. The methods require that independent tire dealers and distributors record, on registration forms, their names and addresses and

the identification number of the tires sold to tire purchasers and provide the forms to the purchasers, so that the purchasers may report their names to the new tire manufacturers and new tire brand name owners, and by which other tire dealers and distributors shall record and report the names of tire purchasers to the new tire manufacturers and new tire brand name owners.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 271,750 hours and $954,000.00.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: June 20, 2003.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 03–16089 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–14793; Notice No. 03–5]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating the possible unauthorized marking of high-pressure compressed gas cylinders by ABM Fire Equipment, 73 North Main Street, Milford, NY 13807. RSPA has evidence that suggests ABM Fire Equipment marked, certified and returned to service an undetermined number of high-pressure DOT specification and exemption cylinders as being properly requalified in accordance with the Hazardous Materials Regulations (HMR), when the cylinders may not have been hydrostatically retested and visually inspected.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been requalified in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce.

FOR FURTHER INFORMATION CONTACT: Dave Clark, Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08628. Telephone: (609) 989–2256, Fax: (609) 989–2277.

SUPPLEMENTARY INFORMATION: Through its investigation of ABM Fire Equipment, RSPA believes that ABM Fire Equipment marked, certified and returned to service an undetermined number of high-pressure cylinders as having been properly requalified in accordance with the HMR without conducting proper testing of the cylinders. Furthermore, RSPA discovered that ABM Fire Equipment did not maintain any retest or reinspection records for the high-pressure cylinders at issue. In addition, RSPA believes that ABM Fire Equipment marked an undetermined number of cylinders with the Requalification Identification Number (RIN) of another company. The HMR require that a cylinder retester obtain a RIN from RSPA. ABM Fire Equipment has never received authorization from RSPA to requalify high-pressure cylinders. On December 9, 2002, ABM Fire Equipment obtained authorization to requalify low-pressure cylinders under RIN D987.

The high-pressure cylinders in question are stamped with RIN A471 in the following pattern:

A 4
M Y
1 7

M is the month of retest (*e.g.*, 10), and Y is the year of the retest (*e.g.*, 03).

RSPA issued RIN A471 to Automatic Protection Systems Corp., 410 South Enterprise Parkway, Corpus Christi, Texas, on March 24, 1980. Automatic Protection Systems last renewed its RIN on January 25, 2001, and is the only authorized user of that RIN. Cylinders serviced and marked by Automatic Protection Systems of Corpus Christi, Texas are not covered by this safety advisory.

RSPA believes that ABM Fire Equipment routinely marked cylinders with RIN A471, as far back as June 1991. This safety advisory covers all high-pressure cylinders that have ever been marked and certified as having been requalified by ABM Fire Equipment, and all low-pressure cylinders marked as having been requalified by ABM Fire Equipment prior to December 9, 2002. These cylinders may pose a safety risk to the public and should be considered unsafe for use in hazardous materials service. Furthermore, cylinders described in this safety advisory should not be filled with a hazardous material unless the cylinders are first properly retested by a DOT-authorized retest facility.

Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper requalification to determine compliance with the HMR and the cylinders' suitability for continuing service. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper requalification to determine compliance with the HMR and the cylinders' suitability for continuing service. Mr. Clark can provide a list of authorized retest facilities in your area, or you may obtain the list at the following Web site: *http://hazmat.dot.gov.* Cylinders described in this safety advisory should not be filled, refilled or used for their intended purposes until they are reinspected and retested by a DOT-authorized retest facility.

RSPA requests that any person possessing a cylinder described in this safety advisory telephone or provide a facsimile to Mr. Clark with the following information for each cylinder: (1) The cylinder manufacturer's name, (2) the serial number of the cylinder, (3) the DOT specification or exemption information marked on the cylinder, (4) the month and year of the last marked requalification by ABM Fire Equipment, and (5) the location of the cylinder.

Issued in Washington, DC on June 19, 2003.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–16003 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 25, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (*see* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13234–N		Quest Diagnostics, Inc. Collegeville, PA.	49 CFR 178.503(f)	To authorize the transportation in commerce of a specially designed packaging made of semi-rigid polyester fabric with polyvinyl chloride backing for use in transporting Division 6.2 hazardous materials. (modes 1, 4)
13244–N		Kihei Industries Houston, TX.	49 CFR 173.302, 173.306(b)(4), 175.3.	To authorize the manufacture, mark, sale and use of non-DOT specification containers described as hermetically-sealed electron tubes for use in transporting Division 2.2 hazardous materials. (modes 1, 2, 3, 4, 5)
13245–N		Piper Impact New Albany, MS.	49 CFR 173.302(a)(1), 175.3.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders similar to DOT Specification 39 cylinders for use in transporting Division 2.2 hazardous materials. (modes 1, 2, 3, 4, 5)
13246–N		McLane Company, Inc. Temple, TX.	49 CFR 172.102 N10, 173.22, 173.308(b), 178.3, 178.503, 178.517, 178.601.	To authorize the transportation in commerce of cigarette lighters, for which approval has been obtained by the lighter manufactures under 49 CFR 173.21(i), in reusable plastic totes. (mode 1)
13249–N		Creative Engineers, Inc. Gisonia, PA.	49 CFR 173.211, 173.34(e).	To authorize the transportation in commerce of certain Division 4.3 hazardous materials in DOT–4BW240 cylinders. (modes 1, 2, 3, 4)
13251–N		Department of Defense Fort Eustis, VA.	49 CFR 172.301(c), 173.302(a).	To authorize the one-time roundtrip transportation in commerce of six non-DOT specification cylinders containing a Division 2.2 compressed gas. (modes 1, 3)
13252–N		Department of Defense Fort Eustis, VA.	49 CFR 172, subparts D&E, 172.400(a)(5), 173.25(a)(2).	To authorize the one-time transportation in commerce of specially designed non-bulk containers containing mercury, Class 8 overpacked in wooden box pallets. (mode 1)
13253–N		H. Koch & Sons Anaheim, CA.	49 CFR 173.62	To authorize the transportation in commerce of a specially designed device for use in transporting Division 1.4S hazardous materials. (mode 5)
13257–N		Pharmacia Corp. Kalamazoo, MI.	49 CFR 172.301(a), (b) & (c), 173.196, subpart C of part 172.	To authorize the transportation in commerce of certain infectious substances in specially designed packaging. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13259–N		Pressure Vessel Technologies, Inc. Warren, WI.	49 CFR 173.302, 173.304a(a).	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT Specification 3E cylinder for use in transporting non-liquefied gases classed in Division 2.1, 2.2 and 2.3. (modes 1, 2)

[FR Doc. 03–16090 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Program Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated form the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 10, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7465–M		State of Alaska (Dept. of Transp. & Public Facil.), Juneau, AK (*See* footnote 1).	7465
10631–M		Hqa. MTMC Operations Center, Fort Eustis, VA (*See* footnote 2)	10631
10915–M		Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA (*See* footnote 3).	10915
11073–M		E.I. DuPont de Nemours and Company, Inc., Wilmington, DE (*See* footnote 4).	11073
11537–M		Burlington Chemical Co., Inc., Burlington, NC (*See* footnote 5)	11537
12155–M	RSPA–98–4558	S&C Electric Company, Chicago, IL (*See* footnote 6)	12155
12442–M	RSPA–00–7208	Cryogenic Vessel Alternatives, Mont Belvieu, TX (*See* footnote 7).	12442
12629–M	RSPA–01–8853	Western Sales & Testing of Amarillo, Inc., Amarillo, TX (*See* footnote 8).	12629
12779–M	RSPA–01–10554	Matheson Tri-Gas, Parsippany, NJ (*See* footnote 9)	12779
12855–M	RSPA–01–10914	KRATON Polymers U.S. LLC (Belpre Plant), Belpre, OH (*See* footnote 10).	12855
13057–M	RSPA–02–12819	Minerals Technologies, Inc., Easton, PA (*See* footnote 11)	13057
13088–M	RSPA–02–13042	Electron Transfer Technologies, Inc., Edison, NJ (*See* footnote 12).	13088
13207–M	RSPA–03–15068	BEI Hawaii, Honolulu, HI (*See* footnote 13)	13207

(1) To modify the exemption to authorize the construction and use of an additional stowage vessel for the transportation of vehicles with attached cylinders of liquefied petroleum gas.

(2) To modify the exemption to authorize a change to the driving experience requirement when transporting certain Class 8 and Division 6.1 materials in DOT Specification MC–338 cargo tanks and to update various paragraphs to coincide with the Hazardous Materials Regulations as currently written.

(3) To modify the exemption to authorize eliminating the virgin burst mode sidewall initiation requirement and the directional stress load distribution restrictions for the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders.

(4) To modify the exemption to authorize the transportation of an additional Class 8 material in DOT Class 112S tank cars.

(5) To modify the exemption to authorize the transportation of additional Class 8 materials in UN31H2 or UN31HA1 Intermediate Bulk Containers.

(6) To modify the exemption to authorize new design change devices and higher service pressure for the non-DOT specification pressure vessel.

(7) To modify the exemption to authorize the use of alternative cryogenic vessel models of the same diameter, length and volume.

(8) To modify the exemption to upgrade the Senior Review Technologist certification and revise the marking requirements for retester symbols and certification dates.

(9) To modify the exemption to authorize the use of additional units with minor design changes for the transportation of a Division 2.2 material.

(10) To modify the exemption to authorize the use of similar non-DOT specification pressure vessels (stainless steel heat exchangers) containing Class 3 materials.

(11) To modify the exemption to authorize the transportation of additional Division 4.1, 4.3 and 6.1 materials contained in the core of a continuous roll of steel tubing.

(12) To modify the exemption to authorize the transportation of certain Division 2.3 materials via cargo aircraft which are not presently authorized in the Hazardous Materials Table.

(13) To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in DOT Specification IM 101 portable tanks that do not conform to the filling density requirements.

[FR Doc. 03–16091 Filed 6–24–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Currency Transaction Report by Casinos—Nevada

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed revision to the Currency Transaction Report—Nevada (''CTRC–N'') and editorial changes to the instructions. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before August 25, 2003.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—CTRC–N Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—CTRC–N Form.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Daniel P. Haley, Regulatory Program Compliance Specialist, Office of Regulatory Programs, FinCEN, at (202) 354–6400; and Judith R. Starr, Chief Counsel and Alma Angotti, Enforcement Counsel, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION: Title: Currency Transaction Report by Casinos—Nevada (CTRC–N).

OMB Number: 1506–0003.

Form Number: FinCEN Form 103–N (Formerly 8852).

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities; to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 5313(a) authorizes the Secretary to issue regulations that require a report when ''a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes. Regulations implementing section 5313(a) are found at 31 CFR 103.22. In general, the regulations require the reporting of transactions in currency in excess of $10,000 a day.

Pursuant to a cooperative agreement between Treasury and Nevada, casinos in Nevada report currency transactions using the Currency Transaction Report by Casinos—Nevada, FinCEN 103–N (Formerly Form 8852).

Action: This revision makes several editorial changes to the CTRC–N. As part of an effort to standardize its forms, FinCEN is changing the form number from Form 8852 to FinCEN Form 103–N. In addition, the format of the country information in Part I items ''11'' and ''25,'' in Part II item ''35,'' and Part III item ''45'' is changed to accept two-digit country codes instead of a text country name, and information about accessing state and country codes on FinCEN's website is added to the instructions. The format for dates entered in Part I items ''8'' and ''26,'' Part II item ''33,'' and Part III items ''48'' and ''51'' is also changed to ease data entry on electronically prepared forms and to conform to current form style. Finally, the Paperwork Reduction Act notice has been moved to page four.

Type of Review: Regular with changes to a currently approved information collection.

Affected public: Business or other for-profit and institutions.

Frequency: As required.

Estimated Burden: Reporting average of 19 minutes per response.[2] Form recordkeeping average of 5 minutes per response, for a total of 24 minutes.

Estimated number of respondents: 115.

Estimated Total Annual Responses: 136893.

Estimated Total Annual Burden Hours: 54,757.

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. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Pub. L. 107–56.

[2] This burden relates to the completion of the CTRC–N form only. The recordkeeping burden of 31 CFR 103.22 is reflected in the final rule requiring financial institutions to file currency transaction reports of suspicious activity.

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.

Dated: June 17, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

BILLING CODE 4810–02–P

FINCEN Form **103-N**
(Formerly Form 8852)
(Rev. December 2003)
Department of the Treasury
FINCEN

Currency Transaction Report by Casinos—Nevada

Previous editions will not be accepted after May 31, 2004.
Please type or print.
(Complete all applicable parts–See Instructions)

OMB No. 1506-0003

1 Check appropriate box(es) if: a ☐ Amends prior report b ☐ Supplemental report

Part I Person(s) Involved in Transaction(s)

Section A–Person(s) on Whose Behalf Transaction(s) Is Conducted (Patron)

2 ☐ Multiple persons

3 Individual's last name or Entity's name | 4 First name | 5 M.I.

6 Permanent address (number, street, and apt. or suite no.) | 7 SSN or EIN

8 City | 9 State | 10 ZIP code – | 11 Country code (if not U.S.) | 12 Date of birth ___/___/___ (MM DD YYYY)

13 Method used to verify identify: a ☐ Examined identification credential/document b ☐ Known Patron - information on file c ☐ Organization d ☐ Other _____

14 Describe identification credential: a ☐ Driver's license/State ID b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Issued by: f Number:

15 Customer's Account Number

Section B–Individual(s) Conducting Transaction(s) - If other than above (Agent)

16 ☐ Multiple agents

17 Individual's last name | 18 First name | 19 M.I.

20 Permanent address (number, street, and apt. or suite no.) | 21 SSN

22 City | 23 State | 24 ZIP code – | 25 Country code (if not U.S.) | 26 Date of birth ___/___/___ (MM DD YYYY)

27 Method used to verify identify: a ☐ Examined identification credential b ☐ Known patron - information on file c ☐ Other _____

28 Describe identification credential: a ☐ Driver's license/State ID b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Issued by: f Number:

Part II Amount and Type of Transaction(s) (Complete Box 31 or 32)

29 ☐ Multiple transactions 30 ☐ Dissimilar transactions

31 CASH IN: (in U.S. dollar equivalent)

a Purchase of casino chips, tokens, and other gaming instrumentalities	$ ____ .00
b Deposit (front money or safekeeping)	____ .00
c Payments on credit (including markers)	____ .00
d Table game cash bet lost	____ .00
e Non-table game cash bet	____ .00
f Other (specify) _____	____ .00
g Enter total amount of CASH IN transaction	$ ____ .00

32 CASH OUT: (in U.S. dollar equivalent)

a Redemption of casino chips, tokens, and other gaming instrumentalities	$ ____ .00
b Withdrawal of deposit (front money of safekeeping)	____ .00
c Advance on credit (including markers)	____ .00
d Payment on bet (including slot jackpot)	____ .00
e Currency paid from wire transfer in	____ .00
f Negotiable instrument cashed (including checks)	____ .00
g Travel and complimentary expenses and gaming incentives	____ .00
h Payment for tournament, contest or other promotions	____ .00
i Other (specify) _____	____ .00
j Enter total amount of CASH OUT transaction	$ ____ .00

33 Date of transaction (see instructions) ___/___/___ (MM DD YYYY) | 34 Time of transaction ___ ___ : ___ ___ ☐ A.M. ☐ P.M. | 35 Foreign currency used (country code)

36 Additional information

Part III Casino Reporting Transaction(s)

37 Casino's trade name | 38 Casino's legal name | 39 Employer identification number (EIN)

40 Address (number, street, and apt. or suite no.) where transaction occurred | 41 Contact Telephone Number ( )

42 City | 43 State | 44 ZIP code – | 45 Country code (if not U.S.)

Sign Here

46 Name and title of recorder/handler | 47 Signature of recorder/handler | 48 Date of signature ___/___/___ (MM DD YYYY)

49 Name and title of reviewer | 50 Signature of reviewer | 51 Date of signature ___/___/___ (MM DD YYYY)

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For Paperwork Reduction Act Notice, see page 4. Cat. No. 23511I FinCEN Form **103-N** (Rev. 12-03) (Formerly Form 8852)

FinCEN Form 103-N (Rev. 12-03) (Formally Form 8852) Page 2

Multiple Persons or Multiple Agents

(Complete applicable parts below if box 2 or box 16 on page 1 is checked.)

Part I (Continued)

Section A – Person(s) on Whose Behalf Transaction(s) Is Conducted (Patron)

3 Individual's last name or Entity's name | 4 First name | 5 M.I.

6 Permanent address (number, street, and apt. or suite no.) | 7 SSN or EIN

8 City | 9 State | 10 ZIP code | 11 Country code (if not U.S.) | 12 Date of birth MM / DD / YYYY

13 Method used to verify identity: a ☐ Examined identification credential/document b ☐ Known Patron - information on file c ☐ Organization d ☐ Other _____

14 Describe identification credential: a ☐ Driver's license/State ID b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Issued by: f Number:

15 Customer's Account Number

Section B – Individual(s) Conducting Transaction(s) - If other than above (Agent)

17 Individual's last name | 18 First name | 19 M.I.

20 Permanent address (number, street, and apt. or suite no.) | 21 SSN

22 City | 23 State | 24 ZIP code | 25 Country code (if not U.S.) | 26 Date of birth MM / DD / YYYY

27 Method used to verify identity: a ☐ Examined identification credential b ☐ Known patron - information onfile c ☐ Other _____

28 Describe identification credential: a ☐ Driver's license/State ID b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Issued by: f Number:

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CTRC-N INSTRUCTIONS

General Instructions

Who Must File. Any Nevada casino that qualifies as a 6A licensee pursuant to Nevada Gaming Commission Regulation 6A (Reg. 6A), generally casinos with greater than $10,000,000 in annual gross gaming revenue and with over $2,000,000 of table games statistical win.

Exceptions. Certain persons are not considered patrons pursuant to Reg. 6A. Transactions with these persons are not reportable. See Reg. 6A for details.

Identification Requirements. Before completing a reportable transaction with a patron, a 6A licensee must obtain a valid, reliable identification credential from the patron. See Reg. 6A for details.

What to File. A 6A licensee must file a Form 103-N for a reportable transactions with a patron as outlined in Reg. 6A. A reportable transaction is a transaction that involves more than $10,000 in cash. Also, smaller transactions occurring within a designated 24-hour period that aggregate to more than $10,000 in cash are reportable if the transactions are the same type transactions within the same monitoring area or if different type transactions occur within the same visit at one location. Do not use Form 105 to report receipts of cash in excess of $10,000 that occur at non-gaming areas; instead use **Form 8300**, Report of Cash Payments Over $10,000 Received in a Trade or Business.

When and Where to File. File each Form 103-N by the 15th calendar day after the day of the transaction with the:

IRS Detroit Computing Center
ATTN: CTRC-N
P. O. Box 32621
Detroit, MI 48232-5604

Keep a copy of each form filed for five years from the date of filing.

Suspicious Transactions. If a suspicious transaction involves more than $10,000 in cash, complete Form 103-N as well as a FinCEN Form102, Suspicious Activity Report by Casinos (SARC). Also, casinos are required to use the SARC form to report suspicious activities involving or aggregating at least $5,000 in cash. **Do not** use Form 103-N to **(a)** report suspicious transactions of $10,000 or less or **(b)** indicate that a transaction of more than $10,000 is suspicious.

When a suspicious transaction requires immediate attention, telephone 1-800-800-2877 between 9:00 a.m. and 6:00 p.m. Eastern Standard Time (EST). An Internal Revenue Service (IRS) agent will direct the call to the local office of the IRS Criminal Investigation Division (CID). In an emergency, consult directory assistance for the local IRS Criminal Investigation Division (CID) office.

Definitions. Certain terms, such as the terms "patron," "designated 24-hour period," "same type of transactions" and "6A licensee," are defined in Reg. 6A.

Penalties. Civil and/or criminal penalties may be assessed for failure to comply with Reg. 6A. See Nevada Revised Statutes 463.125, 463.360 and 207.195.

Specific Instructions

Note: *Additional information that cannot fit on the front and back of the Form 103-N must be submitted along with the item number associated with the additional*

information on plain paper attached to the Form 103-N. Type or print the patron's name, social security number (or EIN), date of the transaction, licensee's name and licensee's EIN (i.e., Items 3, 4, 5, 7, 33, 37, 38 and 39) on all additional sheets so that, if the sheets becomes separated, they may be associated with the Form 103-N.

Item 1 a. Amends Prior Report. Check box **a** if the report corrects an error in a previously filed report or provides information for a previously filed report. Staple a copy of the original report behind the amended one. Complete Part III in its entirety, but only complete those other entries on the form that are being amended.

Item 1 b. Supplemental Report. Check box **b** if the report is for additional same type transactions occurring subsequent to a same type transaction that was reported on a Form 103-N during the same designated 24-hour period. See Reg. 6A for details.

Part I - Person(s) Involved in Transaction(s)

Note: *Section A must be completed. If an individual conducts a transaction on his or her own behalf (i.e., a patron), complete Section A and leave Section B blank. If an individual conducts a transaction on behalf of another individual (i.e., an agent conducts a transaction for a patron), complete Section B for the agent and Section A for the patron.*

Section A - Person(s) on Whose Behalf Transaction is Conducted (Patron)

Item 2. Multiple Persons. Check Item **2** if the transaction is for the benefit of two or more patrons or if the transaction is conducted by two or more patrons who are benefiting from the transaction. Complete Section A on both page 1 and on page 2 for all patrons benefiting from the transaction.

Items 3, 4 and 5. Individual's/Entity's Name. Enter the patron's last name in Item **3**, first name in Item **4** and middle initial in Item **5** (if no middle initial leave Item **5** blank). If the patron is an entity, enter both the legal name (name used in Federal tax filings) and any "DBA" name in Item **3** (Item **4** may also be used if more space is required.).

Items 6, 8, 9, 10 and 11. Address. Enter the permanent street address including apartment or suite number, road or route number, city, state, zip code and two letter country code (if not United States) of the patron. Use two-letter postal abbreviations for the state (e.g., NV for Nevada, CA for California). If the patron is from a foreign country use the required two-letter country code (e.g., JA for Japan) found at the FinCEN web site at www.fincen.gov/req_bsaforms.html or call the FinCEN Help Line at 1-800-949-2732 and select option 5.

If the patron has no residence street address, the patron refuses to provide a residence street address or only provides a post office box for an address, indicate "**NONE**," "**REFUSED**" or the post office box number in Item 6 as applicable.

Item 7. Social Security Number (SSN) or Employer Identification Number (EIN). Enter the patron's SSN or EIN. If a patron refuses to provide an SSN or EIN indicate "**REFUSED**" in Item **7**. If a patron does not have an SSN or EIN indicate "**NONE**" in Item 7.

Item 12. Date of Birth. Enter the patron's date of birth if it is indicated on the patron's identification credential or contained in the 6A licensee's records. If the date of birth is unavailable indicate "**NA**" in Item 12. Enter the date in **MM/DD/YYYY** format, with a zero preceding any single digit number (e.g., September 19, 1963 must be entered as 09/19/1963).

Item 13. Method Used to Verify Identity. Check box **a** if the patron's identification credential was examined. Check box **b** if, in accordance with Reg. 6A, the patron was a "known patron" and the information needed to complete Form 103-N was taken from the 6A licensee's records. If Item **a** or **b** is checked, Item **14** must be completed. If the patron is an entity, check Item **c**, complete Section B and do not complete Item **14**. If an agent is involved in the transaction for a patron other than an entity and the patron's identification credential was unavailable or information for the patron was not available from the 6A licensee's records, check Item **d** and indicate "**U/A**" in the space provided.

Item 14. Describe Identification Credential. Check box **a**, **b**, **c** or **d** as applicable. If Item **d** is checked, specifically indicate the credential examined (e.g., Military ID). For all types of credentials, enter the issuer of the credential such as the state or country (using two-letter abbreviations or codes) in the space provided for box **e** (see instructions for items **10** and **11**). Enter the identification number contained on the credential in the space provided for box **f**.

Item 15. Customer Account Number. Enter the patron's account number associated with the transaction. If no account number exists, indicate "**N/A**."

Section B - Individual(s) Conducting Transaction(s) If Other Than Above (Agent)

Note: *Complete Section B if an agent is involved in the transaction. If an agent is not involved in the transaction, leave Section B blank.*

Item 16. Multiple Agents. Check Item **16** if more than one agent was involved in the transaction(s) for the same patron. Complete Section B on both page 1 and on page 2 for all agents conducting the transaction(s).

Items 17, 18, and 19. Individual's Name. Enter the agent's last name in Item **17**, first name in Item **18** and middle initial in Item **19** (if no middle initial leave Item **19** blank).

Items 20, 22, 23, 24 and 25. Address. Enter the agent's permanent address. Refer to instructions for Items **6**, **8**, **9**, **10** and **11**.

Item 21. Social Security Number (SSN). Enter the agent's SSN. If an agent refuses to provide an SSN indicate "**REFUSED**" in Item **21**. If an agent does not have an SSN indicate "**NONE**" in Item **21**.

Item 26. Date of Birth. Enter the agent's date of birth if it is indicated on the agent's identification credential or contained in the 6A licensee's records. If the date of birth is unavailable indicate "**NA**" in Item **26**. Refer to instructions for Item **12** for format of date entry.

Item 27. Method Used to Verify Identity. Check box **a** if the agent's identification credential was examined. Check box **b** if, in accordance with Reg.

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6A, the agent was a "known patron" and the information needed to complete Form 103-N was taken from the 6A licensee's records.

Item 28. Describe Identification Credential. Complete for agent's identification credential. Refer to instructions for Item **14**.

Part II - Amount and Type of Transaction(s)

Item 29. Multiple Same Type Transactions. Check this item if the reportable transaction consisted of multiple, same type transactions aggregated pursuant to Reg. 6A.

Item 30. Dissimilar Transactions. Check this item if the reportable transaction consists of different types of transactions aggregated pursuant to Reg. 6A.

Note: *Complete either Item **31** or **32**; do not complete both items.*

Item 31. CASH IN.—Enter the dollar or United States dollar equivalent amount of the cash-in transaction on the appropriate line, **a**, **b**, **c**, **d**, **e** or **f**, and repeat the amount on line **g**. If the reportable cash-in transaction involved more than one type of transaction, enter the amount associated with each different transaction type on the appropriate lines, **a**, **b**, **c**, **d**, **e** and **f**, and enter the total of the cash-in transactions on line **g**. If any dollar amount entry is made on line **f**, specify the type of transaction in the space provided. Round amounts up to whole dollars (e.g., $10,220.12 must be entered as $10,221).

Item 32. CASH OUT. Enter the dollar or United States dollar equivalent amount of the cash-out transaction on the appropriate line, **a**, **b**, **c**, **d**, **e**, **f**, **g**, **h** or **i**, and repeat the amount on line **j**. If the reportable cash-out transaction involved more than one type of transaction, enter the amount associated with each different transaction type on the appropriate lines, **a**, **b**, **c**, **d**, **e**, **f**, **g**, **h** or **i**, and enter the total of the cash-out transactions on line **j**. If any dollar amount entry is made on line **I**, specify the type of transaction in the space provided. Round amounts up to whole dollars (e.g., $10,220.12 must be entered as $10,221).

Item 33. Date of Transaction. Enter the date of the transaction. Refer to instructions for Item **12** for format of date entry.

Item 34. Time of Transaction. Enter the time of the transaction and check either **AM** or **PM** (for midnight transactions check **AM**, for noon transactions check **PM**). For multiple same type transactions or dissimilar transactions enter the time of the last transaction.

Item 35. Foreign Currency. If foreign currency is involved, identify the country of issue using a two-letter country code. Refer to instructions for Item **11**. If more than one country of issue is involved indicate the country associated with largest amount of United States dollar equivalent.

Item 36. Additional Information. Use this space for any additional comments that need to be made regarding the transaction or the persons involved in the transaction.

Part III - Casino Reporting Transaction(s)

Item 37. Casino's Trade Name. Enter the "DBA" name of the 6A licensee as indicated on the casino's Nevada gaming license.

Item 38. Casino's Legal Name. Enter the legal name of the 6A licensee as indicated on the casino's Nevada gaming license.

Item 39. Employer Identification Number (EIN). Enter the casino's EIN.

Items 40, 42, 43, 44, and 45. Address. Enter the street address, city, state, and zip code of the location where the transaction occurred (*e.g.*, casino address, branch office address). If the transaction occured outside th e United states, include the country code. Use two-letter abbreviations and codes for state and country. Include province code, if any, for foreign countries. Refer to instructions for item **11** for information about abbreviations.

Item 41. Contact Telephone Number. Enter the business telephone number, including area code, of an individual that is to be contacted regarding questions about this report.

Item 46, 47 and 48. Name, Title and Signature of the Recorder/Handler and Date of Signature. Print or type the name and title of the person who handled/recorded the transaction in Item **46**. The handler/recorder signs the form in Item **47** and the date the form was signed is recorded in Item **48**. Refer to instructions for Item **12** for format of date entry.

Item 49, 50 and 51. Name, Title and Signature of the Reviewer and Date of Signature. Print or type the name and title of the person who performed the accounting department review of the form in Item **49**. The reviewer signs the form in Item **50** and the date the form was signed is recorded in Item **51**. Refer to instructions for Item **12** for format of date entry.

Paperwork Reduction Act Notice. The requested information is useful in criminal, tax, and regulatory investigations and proceedings. Pursuant to Nevada Gaming Commission Regulation 6A (Reg. 6A), Nevada casinos classified as "6A licensees" are required to provide the requested information. Reg. 6A is administered by the Nevada Gaming Control Board and Nevada Gaming Commission. Nevada casinos comply with Reg. 6A in lieu of 31 U.S.C. 5313 and 31 CFR Part 103 based upon an exemption granted to the state of Nevada by the U.S. Department of the Treasury.

You are not required to provide the requested information unless the form displays a valid OMB number. The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 19 minutes. If you have comments concerning the accuracy of this time estimate or suggestions to improve this form, you may write to the Financial Crimes Enforcement Network, Attn: Office of Regulatory Programs, Post Office Box 39, Vienna, VA 22183-0039. **Do not** send a completed form to this address. Instead, see **When and Where to File** above.

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[FR Doc. 03–16012 Filed 6–24–03; 8:45 am]

BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2003–38

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2003–38, Compliance Initiative for Foreign Corporations and Nonresident Aliens, with Related Document on Frequently Asked Questions.

DATES: Written comments should be received on or before August 25, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Compliance Initiative for Foreign Corporations and Nonresident Aliens, with Related Document on Frequently Asked Questions.

OMB Number: 1545–1845.

Notice Number: Notice 2003–38.

Abstract: Notice 2003–38 explains a compliance initiative that is available to nonresident aliens and foreign corporations that have not filed timely income tax returns in accordance with the regulations under section 874(a) or 882(c)(2). The initiative is intended to encourage these taxpayers to file required returns. In addition, the notice explains the procedures by which affected taxpayers may participate in the initiative.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

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: June 19, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–16079 Filed 6–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, July 21, 2003 from 2 p.m. PDT to 4 p.m. PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave., M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 19, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–16080 Filed 6–24–03; 8:45 am]

BILLING CODE 4830–01–M

Federal Register

Wednesday,
June 25, 2003

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319
Importation of Fruits and Vegetables; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 02–026–4]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to be treated or meet other special conditions. This action will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables. We are also recognizing areas in several countries as free from certain fruit flies; amending the packing requirements for certain commodities; expanding locations in the northeastern United States where cold treatment can be conducted; updating and clarifying restrictions on the entry of fruits and vegetables; updating and clarifying permit procedures, including amendment, denial, or withdrawal of permits; requiring full disclosure of fruits and vegetables at the port of first arrival and clarifying the conditions under which they may be released for movement; and making other miscellaneous changes.

DATES: This regulation is effective June 25, 2003. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests.

On October 1, 2002, we published a proposed rule in the **Federal Register** (67 FR 61547–61564, Docket No. 02–026–1) to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We also proposed to make several other amendments to update and clarify the regulations and improve their effectiveness. On November 7, 2002, we published a correction to the proposed rule (67 FR 6799, Docket No. 02–026–2).

We solicited comments concerning our proposal for 60 days ending December 2, 2002. We received 60 comments by that date. They were from growers, packers, shippers, industry and trade representatives, and representatives of State and foreign governments. While 42 commenters wrote to support specific portions of the rule, 18 wrote to express concern or object to some aspect of the proposed rule. These comments are discussed below.

General

Given that certain Animal and Plant Health Inspection Service (APHIS) functions and personnel were moved to the Department of Homeland Security (DHS), one commenter recommended that we delay issuing a final rule based on the proposed rule because a transition period is not an appropriate time to add new responsibilities and procedures. While we are allowing additional fruits and vegetables to be imported into the United States and are making other amendments to update and clarify the regulations and improve their effectiveness, we do not consider these amendments as new responsibilities and procedures. Therefore, we are not delaying this final rule as a result of the transfer of functions to DHS.

In accordance with Executive Order 12988, we included a statement in our proposed rule giving notice that any State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Two commenters objected to this language concerning the preemption of State and local laws. One commenter was concerned that APHIS was imposing mandates upon State and local governments by preempting their authority to restrict entry of fruits and vegetables imported under the regulations, without assuming the full cost of eradication for pests and diseases that may be hitchhiking on these commodities. Both commenters objected to the concept that imported fruits and vegetables are considered in foreign commerce until sold to the ultimate consumer.

One of the requirements under Executive Order 12988 is that a Federal agency specify in clear language the preemptive effect it believes will be given to its regulations. Preemption in foreign commerce is specifically addressed in § 436(a) of the Plant Protection Act (7 U.S.C. 7756(a)), which states that ''[n]o State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—(1) To control a plant pest or noxious weed; (2) to eradicate a plant pest or noxious weed; or (3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.'' When foreign commerce ceases is a question of fact that must be addressed in each individual case. However, the Department of Agriculture has taken the position that fresh fruits and vegetables imported into the United States for immediate distribution and sale remain in foreign commerce until they are sold to the ultimate consumer. Other questions regarding when foreign commerce ceases must be addressed on a case-by-case basis and will be resolved based on the facts in each particular case.

One commenter recommended that the economic analysis address, in detail, the economic effects of domestic infestation that could occur under the proposed regulations. APHIS conducts economic analyses for import-related rulemaking using the assumption that the importation of a particular commodity will not result in the introduction of pests or diseases; indeed, the prevention of such introductions is a primary goal of those rulemakings. APHIS does, however, routinely attempt to quantify, to the extent possible, the size (in dollar terms) of the domestic industry that stands to be affected by a rulemaking. The introduction of a pest or disease would likely be detrimental to the economic health of that domestic industry, as well as related industries. However, without some indication as to the actual or likely scope of a pest or disease outbreak, any estimate of losses would have to range from somewhere above zero to 100 percent. Further, if we had a sense that an outbreak was likely, we would not promulgate the rule.

Another commenter stated that APHIS' relaxation of U.S. standards, while foreign trading partners continue to strengthen their opposition to similar standards, is multiplying the economic harm to American agricultural interests and amounts to ''unilateral agricultural disarmament'' in the international trade arena. Our regulations are based on pest risk assessments, survey data, and other science-based considerations. We analyze each amendment to the regulations concerning the admissibility of specific fruits and vegetables, and fruits and vegetables in general, independent of foreign export agreements. The amendments to the regulations in this rule are not a relaxation of our standards.

One commenter asked us to assure U.S. agricultural industries that the proposed amendments will not lessen the sanitary and phytosanitary standards of protection afforded to U.S. fruits and vegetables against infestation or disease from imports.

A major responsibility of the U.S. Department of Agriculture (the Department) is preventing the introduction and spread of plant pests; indeed, the Plant Protection Act requires the Department to carry out this responsibility. APHIS is responsible for implementing the regulations that carry out the intent of the Plant Protection Act. As part of this responsibility, we ensure that our resources are adequate to carry out our day-to-day functions such as verifying that agricultural commodities meet U.S. phytosanitary entry requirements at ports of entry and working with our cooperators to conduct plant pest surveys and eradication programs when necessary.

The amendments we are making to the regulations in this rule are not a reduction of sanitary and phytosanitary standards of protection. The amendments either strengthen or clarify the protection that the regulations provide. For instance, the amended packaging requirements for tomatoes from Spain, France, Morocco, and Chile will strengthen that protection by requiring that packaging safeguards remain intact upon arrival in the United States. Further, as discussed below, removing the criterion of ''without risk'' is intended to clarify the regulations to make them consistent with sound science.

Removing the ''Without Risk'' Criterion

Several commenters disagreed with our proposal to remove the ''without risk'' criterion from the regulations in § 319.56–2(e)(3) and (e)(4) that specify that certain fruits and vegetables may be imported from a definite area or district if that area or district is free of all or certain injurious insects (referred to elsewhere as pest-free areas) and the importation of the fruits and vegetables can be authorized ''without risk.''

One concern commenters expressed with the removal of the ''without risk'' criterion from the regulations is that this amendment will broaden APHIS' discretion without adequately ensuring that the phytosanitary security of our borders will be fully maintained. Several commenters were concerned that this amendment would allow trade or political issues to take precedence over the protection of U.S. agriculture.

Because the removal of the ''without risk'' criterion from the regulations is merely an administrative action to remove an impractical criterion, its removal will not affect APHIS' discretion or our responsibility to guard against the introduction of pests. This change will not affect the purpose of our regulations—to protect the United States from the introduction or spread of plant pests—nor will it cause trade or political issues to take precedence over our responsibility. Further, the regulations in § 319.56–6 provide APHIS with discretion to refuse entry, require treatment, or require destruction of shipments of fruits and vegetables. In this rule, we are strengthening this requirement by specifying that imported fruits and vegetables must be fully disclosed at the port of first arrival.

Another concern raised by commenters was that commodities such as citrus from South Africa and Australia are currently being imported into the United States under the criterion of ''without risk'' and therefore our removal of that criterion would be misleading. We believe that this comment reinforces the need to remove the ''without risk'' criterion because it indicates that we need to clarify our regulations—no fresh agricultural commodity may be imported ''without risk.'' While the regulations prescribe inspection and, in some cases, as with citrus from South Africa and Australia, provide additional safeguards to reduce risk and guard against the introduction of quarantine pests, risk cannot be completely eliminated. The International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization addresses this issue in the International Standards for Phytosanitary Measures (ISPM) No. 1, ''Principles of Plant Quarantine as Related to International Trade.'' The specific principle for managed risk states that ''because some risk of the introduction of a quarantine pest always exists, countries shall agree to a policy of risk management when formulating phytosanitary measures.'' Thus the fact that some risk does exist is an internationally recognized principle.

One commenter stated that the ''without risk'' language should not be changed because such a change is not specifically mandated in the Plant Protection Act and is contrary to § 412 (7 U.S.C. 7712) of the Act. Instead, this commenter stated, retaining the ''without risk'' criterion grants the appropriate importance to APHIS' mandate to protect U.S. agriculture from quarantine pests that could cause substantial economic loss and other devastation to U.S. agriculture.

While the Plant Protection Act did not expressly direct the Department to remove the ''without risk'' criterion from the regulations, we disagree that the removal of the language is contrary to the Plant Protection Act. In fact, in its findings accompanying the Plant Protection Act, Congress stated in § 402(3) (7 U.S.C. 7701(3)) that ''it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds.'' Given that the Act directs the Secretary to reduce risk ''to the extent practicable''—and not to zero—we believe that removing the impractical and unrealistic ''without risk'' criterion from the regulations is consistent with the intent of Congress as expressed in the Plant Protection Act.

One commenter stated that omitting a definition of acceptable risk would lead to a regulatory process that will be less based on sound science and that APHIS is seeking to avoid defining what ''without significant risk'' means for future importations. Further, commenters voiced concern that we are not replacing the ''without risk'' criterion with a standard that indicates an acceptable level of risk. It is APHIS' belief, which is based on sound science, that it is not appropriate to define an acceptable level of risk for all future imports. The risks associated with importations of fruits and vegetables vary depending upon the pest-commodity-origin complex. Further, the Plant Protection Act does not define the term ''acceptable level of risk'' or require the Secretary to define it, nor does the Plant Protection Act require the Secretary to prohibit imports unless he or she can conclude that there is zero risk of pest introduction. Instead, the Act gives the Secretary discretion to

allow imports where he or she can conclude that the restrictions imposed will prevent the introduction of a pest. In deciding whether to allow imports, the Secretary weighs a variety of factors that could include whether the pest attacks a single commodity or multiple commodities, reliability of the data on which the risk of establishment projections are based, and the feasibility of proposed mitigation measures.

The lack of a specific standard for an acceptable risk level will not lead to a regulatory process that will be less transparent or establish a system that is easily changed by outside parties as one commenter indicated. Removing the ''without risk'' criterion will not affect the rulemaking process. Any changes to the regulations will continue to be made using notice and comment rulemaking, which helps to ensure transparency. Further, the lack of a specific standard for an acceptable level of risk will not lead to a system that is easily changed by outside parties as we will continue to base our decisions on sound science.

One commenter linked the failure to address the standard of phytosanitary security to additional costs (*i.e.*, above those indicated in the proposed rule) associated with a Mediterranean fruit fly (*Ceratitis capitata*) (Medfly) outbreak. As stated in the proposed rule, we are removing the ''without risk'' criterion because it is impossible to satisfy. Therefore, no additional costs due to a Medfly outbreak would be associated with this change in the regulations.

Another commenter stated that we should establish acceptable levels of risk based on the outcome of a case concerning the importation of citrus from Argentina, *Harlan Land Company,* et al. vs. *United States Department of Agriculture,* et al., Case #CV–F–00–6106–REC/LJO (D. Ariz. Sept. 27, 2001). APHIS believes that the court's decision applies strictly to the rule at issue in that case and does not apply to this rule.

One commenter stated that the ''without risk'' criterion protects the environment in that if a foreign pest outbreak occurred and the pest became established in the United States, the environment would be compromised due to pesticide spraying and other pest control methods. Although eradication of quarantine pests may require the use of pesticides and other control methods, removing the ''without risk'' criterion does not have the potential to harm the environment. The ''without risk'' criterion is impractical, and its removal will not have any impact on the environment. In the event of an outbreak, APHIS would continue to prepare any necessary environmental documentation under the National Environmental Policy Act and the Endangered Species Act in advance of any pesticide use and other pest control methods.

Two commenters voiced concern that we were proposing to replace the ''without risk'' criterion with the IPPC standard pertaining to pest-free areas, but this was not our intent. As stated in the proposed rule, we are removing the ''without risk'' criterion from § 319–56–2(e)(3) and (e)(4) because it is impossible to satisfy that requirement. We are not replacing the criterion with either a definition of acceptable risk or with the IPPC standard for pest-free areas. We proposed to adopt ISPM No. 4, ''Requirements for the establishment of pest free areas,'' as a replacement for the specific criteria for area freedom in § 319.56–2(f). While ISPM No. 4 specifies that one of the considerations in establishing a pest-free area is the ''level of phytosanitary security required as related to the assessed level of risk, according to the pest risk analysis conducted,'' this is not a deviation from our current practice of conducting a pest risk analysis for commodities not previously approved for importation.

Incorporation by Reference of Standard for Establishment of Pest-free Areas

We proposed to replace the specific criteria in § 319.56–2(f) for pest-free areas with the ISPM No. 4, ''Requirements for the establishment of pest-free areas,'' which would be incorporated by reference into the regulations.

One commenter claimed our statement that ''[w]e believe that incorporating this standard by reference into our regulations would prevent the introduction of quarantine pests into the United States and provide requirements that are consistent with the IPPC'' is unrealistic because the standard could not completely eliminate the risk of introducing pests. The commenter is correct that our adoption of the standard by itself would not eliminate the risk of introducing pests. The standard describes requirements for the establishment and use of pest free areas as a risk management option for phytosanitary certification, and our intent was to communicate our belief that using the standard to determine the pest-free status of an area would provide us with an effective risk management tool that, more so than our existing criteria for the establishment of pest-free areas that have been found in § 319.56–2(f), is consistent with internationally recognized standards.

One commenter opposed the use of the IPPC standard because it appears that APHIS is proposing to supercede the Federal government's rulemaking authority with blanket approval for the IPPC to determine U.S. sanitary and phytosanitary standards. According to the commenter, this change could result in deferring the establishment of risk criteria to an international body, which could be arbitrary and capricious and lack transparency and accountability, as well as be an abuse of discretion. Another commenter who disagreed with using the IPPC standard objected on the grounds that we would be abdicating our responsibilities to an international group that would not always be controlled by the best science.

In making this amendment to the regulations, we are not abdicating our rulemaking authority or responsibilities to the IPPC, nor are we deferring our establishment of risk criteria to that body. Any decision made regarding the pest-free status of an area in the context of our import requirements will continue to be made by APHIS, just as has been the case under the provisions of § 319.56–2(f) that ISPM No. 4 will replace. It is important to note that incorporating ISPM No. 4 by reference has the effect of making that standard, in its current form (*i.e.*, the February 1996 version made available for review with the proposed rule), part of our own regulations. Because of that, we would have to initiate rulemaking to update the incorporation by reference—thus giving the public an opportunity to review and comment upon any changes that had been made to the standard—before any future changes that might be made by the IPPC to that 1996 version of ISPM No. 4 could become part of our regulations.

With respect to the issue of transparency raised by one of the commenters, we believe that our incorporation by reference of ISPM No. 4 will make our regulations more, and not less, transparent. The criteria in § 319.56–2(f) that we have used for recognizing pest-free areas make reference to surveys performed in accordance with requirements approved by the Administrator and phytosanitary requirements deemed by the Administrator to be at least equivalent to our own, but do not provide specific details regarding those survey and phytosanitary requirements. ISPM No. 4, on the other hand, provides both general and specific requirements for determination of pest-free areas, establishment and maintenance of pest-free areas, systems to establish freedom, phytosanitary measures to maintain freedom, checks to verify freedom has been maintained, and documentation and review.

Another commenter partly supported the reference to the IPPC standard but was concerned that stating that a country's program meets the requirements of the standard for a pest-free area is not entirely transparent. The standards are written broadly, and measures such as ad hoc monitoring, general surveillance, and specific surveillance vary from situation to situation. Only measures specifically applied to the identified pest risk should be used to support a statement that the appropriate level of protection has been attained.

We agree that the standards used to determine whether an area is pest free will vary. When we evaluate whether an area is pest free, we consider and apply the appropriate measures. We believe that the survey, data, research, pest risk assessment, and other elements that must be addressed under ISPM No. 4, which must be approved in each particular case by APHIS and which will be made available to the public for review before we make a final determination as to an area's pest free status, will provide for a transparent decisionmaking process and will ensure that measures specifically applied to the identified pest risks will be used to support our determinations.

Another concern expressed by a commenter was that incorporating this standard by reference would result in surrendering the survey for pests to the country of origin. Incorporating the IPPC standard for pest-free areas into the regulations will not affect the way that we approve pest surveys in the country of origin. Agricultural authorities in the country where the area is located will continue to conduct the surveys as they have done in the past, and the surveys will continue to be performed according to procedures approved by APHIS. Given that we will continue to approve the survey methodology and resulting data prior to determining whether an area is indeed pest free, APHIS' role in ensuring that the surveys are valid and meet the requirements of the regulations will not be affected by this amendment to the regulations.

One commenter voiced concern that adopting the IPPC standard could be a prelude to establishing low prevalence pest areas that would be totally governed by the IPPC. We will not use this standard to establish low prevalence pest areas, let alone such areas that would be totally governed by the IPPC. The scope of ISPM No. 4 does not provide for the recognition of low prevalence pest areas; it is limited to the requirements for pest-free areas, which the standard defines, in part, as ''an area in which a specific pest does not occur. * * *

One commenter suggested that we change the proposed language incorporating the IPPC standard by reference so that pest-free areas would not have to be added to our regulations through rulemaking before imports could be allowed from such areas. Specifically, he recommended that the Administrator of APHIS authorize administratively the importation of a fruit or vegetable under § 319.56–2(e)(3) or (4), whenever he or she determines that the fruit or vegetable is being imported from an area that satisfies the requirements of ISPM No. 4 for recognition as a pest-free area with respect to the pests of concern for that fruit or vegetable. We are considering the suggestion, and if we determine that making that change would be appropriate, we will propose it in a separate document published in the **Federal Register** for comment.

In this final rule, we are not making any changes based on the comments received on incorporation by reference of ISPM No. 4. However, we are making two editorial changes. First, we are clarifying that the Administrator must determine that the area is free of the pest or pests in accordance with the criteria for establishing freedom found in ISPM No. 4. In the proposed rule, we stated that ISPM specifies *requirements* for an area to meet; however, *criteria* are actually specified. Second, we are retaining the paragraph in the regulations that states that ''[w]hen used to authorize importation under § 319.56–2(e)(3), the criteria must be applied to all injurious insects that attack the fruit or vegetable; when used to authorize importation under § 319.56–2(e)(4), the criteria must be applied to those particular injurious insects from which the area or district is to be considered free.'' As proposed, that paragraph would have been removed, but we believe retaining that paragraph is necessary to specify how the criteria are applied to a definite area or district in the country of origin that is free from all injurious insects that attack the fruit or vegetable (§ 319.56–2(e)(3)) or is free from certain injurious insects that attack the fruit or vegetable (§ 319.56–2(e)(4)).

Rambutan From Central America and Mexico

We proposed to amend § 319.56–2t to allow the importation of rambutan from Central America and Mexico. One commenter supported the importation of rambutan from Central American countries but questioned whether cold treatment or other treatment of rambutan was required. If treatment is required, the commenter stated, electrification, irradiation, vapor, hot water, or fumigation treatments would be preferable to cold treatment. Rambutan from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama will be eligible to be imported under § 319.56–2t, which lists fruits and vegetables for which treatment is not a condition of entry. However, under § 319.56–6, rambutan, like any fruit or vegetable, may be subject to treatment if the inspector finds a pest of concern during inspection at the port of first arrival and determines that treatment is necessary. If a quarantine pest were to be found, an inspector would determine what action to take, including treatment, reexportation, or destruction of the shipment.

Another commenter requested more studies to support the importation of rambutan from Central America and Mexico. The commenter stated that fruit cutting for two seasons and the reliance on interceptions in passenger baggage and other information on which APHIS' decision was based are insufficient evidence that rambutan is not a fruit fly host in Central America and Mexico.

We believe that the evidence presented in the pest risk assessment is sufficient to support our decision to allow the importation of rambutan from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama. The research indicates that fruit flies that occur in Central America and Mexico are not likely to follow the pathway on undamaged rambutan fruit, and they are not reported as pests of rambutan in these regions. In the field study in which 47,188 fruits of 10 varieties were cut over two seasons, no Medfly was found. Another study that was conducted under laboratory conditions indicates that the Medfly was able to oviposit, but with very low pupation rate, in damaged fruit.[1] Therefore, we are requiring that the country of origin's national plant protection organization (NPPO) declare on the phytosanitary certificate that they have supervised the removal of all damaged fruit from the shipment prior to export to the United States. An additional study in Hawaii, which is not cited in the pest risk assessment, showed that Medfly could not successfully oviposit on rambutan

[1] Vasques, L.A. 2000. Evaluation of rambutan *Nephelium lappaceum* L. as a host of three species of fruit flies: *Ceratitis capita* Weidemann, *Anastrepha ludens* Loew, and *Anastrepha obliqua* Macquart, in Honduras Department of Plant Protection, Honduran Foundation Agriculture Research, FHIA, report submitted to USDA, APHIS.

under forced infestation experiments under controlled laboratory conditions.[2] Another consideration is that there is no valid report or other evidence that this fruit is a host of either Medfly or fruit flies of the genus *Anastrepha* under field conditions.

One commenter supported the importation of rambutan as well as other commodities from Honduras. He reported that Honduras would export approximately 1,500 metric tons of rambutan from the estimated 250 hectares of rambutan that will be in production in 2003. He also reported that there are more than 125 growers of rambutan in Honduras. We will include this information in the final regulatory flexibility analysis for this rule.

Fennel From El Salvador, Guatemala, and Nicaragua

We proposed to amend § 319.56–2t to allow the importation of fennel from El Salvador, Guatemala, and Nicaragua. Commenters indicated that imports of fennel would harm U.S. fennel producers. The commenters reported that fennel is grown in California and Arizona in sufficient quantities to meet the demand for commercial fennel. Commenters also objected to the use of fennel seed data in the economic analysis instead of data for fennel leaves and stems and provided production data for two of the four California counties in which they stated fennel is produced.

We have included information provided by the commenters regarding domestic fennel production in this rule's final regulatory flexibility analysis. We were unable to find supporting or additional data, which could be because this commodity is a specialty crop. We have removed the data on imports of fennel seed from El Salvador from the final regulatory flexibility analysis because they do not apply to the importation of fennel leaves and stems. We also address effects on domestic producers in the final regulatory flexibility analysis.

Several commenters objected to the importation of fennel into the United States from El Salvador, Guatemala, Honduras, and Nicaragua based on their dissatisfaction with the pest risk assessment. The commenters voiced concern that the pest risk assessment contained insufficient detail concerning research conducted to identify all potential pests. Commenters questioned whether *Agrotis segetum* is limited only to Honduras as reported in the pest risk assessment.

We would like to point out that while the pest risk assessment was conducted to examine the pest risk associated with the importation of fennel from El Salvador, Guatemala, Honduras, and Nicaragua, we proposed to allow the importation of fennel from only three of those countries—El Salvador, Guatemala, and Nicaragua.

The research conducted for the pest risk assessment was complete and thorough. We conducted an exhaustive search of literature and reviewed our historical plant pest database and interception information. In addition to the literature sources cited in the pest risk assessment, we consulted more than 135 other sources. One of those sources, the Government of Honduras, indicated that *A. segetum* is present in Honduras. *A. segetum* is a quarantine pest that the pest risk assessment identified as likely to follow the pathway. After considering the pest risk assessment and available mitigation measures for that quarantine pest, we determined that fennel from Honduras could not be proposed for importation into the United States. However, *A. segetum* was not listed in the sources consulted as occurring in El Salvador, Guatemala, or Nicaragua.

Some of the commenters voiced concerns that an interception from Guatemala of Lepidoptera species was not analyzed, referring to the note in the pest risk assessment that the absence of taxonomic information at the species level makes biological evaluations difficult. The interception of the Lepidoptera species was not further analyzed in the pest risk assessment as it was a single occurrence that was intercepted in fennel from Guatemala in 1996 with an inconclusive determination of quarantine status.

Several commenters were concerned about pests that were identified in the pest risk assessment as likely to follow the pathway. Table 2 of the pest risk assessment lists pests of fennel in El Salvador, Guatemala, Honduras, and Nicaragua that have been reported in scientific and regulatory literature. While table 2 lists 12 pests that are known to occur in these 4 Central American countries, only 1 of the 12 is a quarantine pest—*A. segetum.* Even though 11 of the pests were identified as likely to follow the pathway, we do not consider them quarantine pests because they are established in the United States. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry into the United States, must be inspected; they are also subject to disinfection at the port of first arrival if an inspector requires it. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated.

Several commenters recommended that the exporting country must prove that it has a system in place to ensure that pests are not transported in fennel shipments, rather than relying on APHIS inspections at the port of entry, because they are concerned that there are no indications that inspections are sufficient to prevent an infested shipment from entering the United States.

APHIS successfully uses inspection at the point of entry as the only phytosanitary measure needed to mitigate the pest risk posed by several commodities from various countries. Inspectors are trained to find pests in agricultural commodities. In 2002, APHIS inspectors intercepted 68,556 quarantine pests, and it is estimated that an equal number of nonquarantine pests were intercepted. As discussed above, no quarantine pests were identified in the pest risk assessment as occurring in fennel from El Salvador, Guatemala, and Nicaragua. Therefore, inspection at the port of entry mitigates the pest risk posed by the importation of fennel from El Salvador, Guatemala, and Nicaragua.

Several commenters expressed concern that the pest risk assessment did not address the impact on U.S. growers should any pest be introduced. The pest risk assessment is consistent with the guidance provided by the North American Plant Protection Organization (NAPPO), the IPPC, and APHIS' Guidelines for Pathway-Initiated Pest Risk Assessments. The pest risk assessment examined pest risk associated with the importation into the United States of fresh leaves and stems of fennel from El Salvador, Guatemala, Honduras, and Nicaragua. Risk of introduction of pests was evaluated in qualitative terms of high, medium, and low. One of the risk elements that we considered in determining the consequences of introduction for *A. segetum* was the economic impact. As shown in table 3 of the pest risk assessment, we rated the economic impact of such an introduction as high.

Peppers From Israel

We proposed to amend § 319.56–2u to require that insect-proof containers remain intact during transit and be intact upon arrival in the United States. We also proposed an alternative packaging method of covering non-insect-proof boxes with insect-proof

[2] Phillips, Thomas W. 1998. Quarantine Hot Air Treatment for Hawaiian-Grown Rambutan, *Nephelium lappaceum*, To Disinfest the Fruit Flies *Bactrocera dorsalis* and *Ceratitis capitata*, USDA, Agricultural Research Service, report submitted to USDA, APHIS.

mesh or plastic tarpaulins that would then be placed inside a shipping container. We also proposed that, if the peppers were shipped through an area that was not a fruit-fly free area, the Israeli national plant protection organization would have to secure the shipping containers with a numbered seal, which would be required to remain intact until arrival in the United States.

One commenter objected to the proposed requirement that shipping containers remain sealed and intact until peppers from Israel arrive in the United States. The commenter relayed that the shipping containers transit Europe, where the shipping containers are opened to rearrange the boxes during transport to the United States. Thus the proposed seal on shipping containers transiting fruit-fly areas would not remain intact during transit from Israel to the United States.

The purpose of the packaging safeguards is to ensure that peppers shipped from Israel to the United States are protected from pests during all phases of their movement from the approved screenhouses. Our proposed requirements that the peppers be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins that must arrive intact in the United States will remain unchanged. We are, however, removing the requirement that the shipping containers be sealed. Because the shipping containers are opened and the insect-proof cartons of peppers within the shipping container are transferred to another shipping container, we agree that the proposed requirements that shipping containers remain sealed at all times during the movement of peppers to the United States and that the seal be intact upon the arrival of the peppers in the United States are not feasible. Further, we believe that the certification on the phytosanitary certificate that the requirements of the regulations have been met, coupled with the requirement that the insect-proof packaging remain intact until the arrival of the peppers in the United States, will be adequate in protecting shipments of peppers from Israel from the infestation by pests during transport.

Yellow Pitaya From Colombia

We proposed to amend § 319.56–2x to allow the importation of yellow pitaya from Colombia. We specified that yellow pitaya would have to undergo vapor heat treatment for the Medfly and the South American fruit fly, *Anastrepha fraterculus*, in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference in 7 CFR 300.1.

We received four comments opposing the importation of yellow pitaya from Colombia into the United States. The commenters stated that the pest risk assessment is inadequate because it does not thoroughly evaluate pests of concern. Commenters indicated that the pest risk assessment should consider pests of the stem and root in addition to pests of the fruit because portions of the stem and root would accompany the fruit during shipment. Specific pests of concern provided in the comments are *Fusarium* and *Droxlera* spp. One commenter was concerned that the pest risk assessment overlooked a biotype of *Fusarium oxysporum* that is in Colombia but not present in the United States and that could affect U.S.-grown pitaya fruit as well as other cactus species.

We did not consider pests of the stem and root in the pest risk assessment because stem and root portions will not accompany the yellow pitaya fruit during shipment from Colombia to the United States. In Colombia, commercially produced fruit of yellow pitaya are harvested and shipped without attached stem or root portions. We conducted a thorough search of worldwide literature and did not find mention of ''*Droxlera* spp.'' or any published reports of a biotype of *F. oxysporum* that is present in Colombia but not present in the United States. As indicated in the pest risk assessment, *F. oxysporum* is a pathogen of yellow pitaya in Colombia, but because it is also present in the United States and not under official control, it is not considered a quarantine pest.

Commenters noted the drastic decline in surface area planted to pitaya in Colombia between 1990 and 1996 reported in the document ''Vapor heat treatment for pitaya fruit infested with eggs and larvae of Mediterranean fruit fly.'' Colombia reported 1,016.95 ha of pitaya in 1990, and in 1996, there was only 255.4 ha. They stated that Dr. Yosef Mizrahi of Israel reported that a strain of *Fusarium oxysporum* as well as another fruit fungus (which commenters stated might be *Droxlera* spp.) were responsible for this loss of production area. They also stated that Dr. Mizrahi has advised all U.S. researchers and producers of pitaya to not import any plant material of pitaya from Colombia to the United States for fear of transmitting these diseases.

We disagree that the decline in yellow pitaya was attributed to *Fusarium oxysporum* or another fruit fungus. The decline in acreage planted to yellow pitaya in Colombia from 1990–1996 is directly related to the cessation of shipments of commercial yellow pitaya fruit from Colombia to Japan. In 1989, Medfly was found to be associated with Colombian yellow pitaya fruit and exports to Japan were halted.[3] In the late 1990s, Japan and Colombia cooperated in the development of a successful vapor heat treatment for fruit flies in yellow pitaya. In 2000, Colombia resumed shipment of yellow pitaya fruit to Japan and successfully shipped 14.2 tons of vapor-heat-treated fruit to Japan between February and April 2000.

One commenter pointed out that, according to the pest risk assessment, action may be taken and further risk assessment may be conducted for certain pests if those pests are found in shipments of yellow pitaya. The commenter stated that APHIS must take the appropriate steps prior to allowing the importation rather than after the shipment arrives in the United States. Another concern was that some of the pests that were not further analyzed in the pest risk assessment were eliminated from consideration for reasons other than research evidence.

Shipments are subject to inspection at the port of entry and will be denied entry if pests of concern are intercepted. We do investigate pest problems associated with commodities in their countries of origin during our pest risk assessments. Our current method of performing pest risk assessments is to do an exhaustive search of literature and review our historical plant pest database and interception information. When available, we also use information from other sources, and occasionally conduct onsite investigations in proposed export areas. The pest risk assessments are science-based and largely dependent upon literature on plant pest problems in countries of origin. This literature is primarily investigative findings published by scientists. Our experience has shown that if a pest causes damage to an economic crop, the scientific community investigates the pest's biology and extent of pest damage in prescribing remedial actions.

Another concern raised by commenters was that APHIS' approval for the importation of yellow pitaya from Colombia would be based on the mitigation provided by a vapor heat treatment for Medfly, but that the pest risk assessment does not address the protection mechanisms against the other pests. In addition, some commenters stated that the pest risk assessment is

[3] ACCI. 2002. Cooperation con Japan: Pitahaya de Exportacion. Reportajes Agencia Colombiana de Cooperacion International (ACCI). Nota publicada en el boletin No. 7-Julio de 2000.

not definitive enough when stating that the vapor heat treatment may have mitigating effects on surface pests. One commenter argued that the use of the words ''may,'' ''likely,'' and ''unlikely'' in the pest risk assessment demonstrates a lack of a thorough risk assessment and that stating that it is ''very unlikely'' for a pest to remain with the imported fruit is unacceptable.

Our pest risk assessment was conducted in accordance with NAPPO and IPPC guidelines, which are referenced in our pest risk assessment. ISPM No. 11, ''Guidelines for Pest Risk Analysis for Quarantine Pests,'' describes three stages of pest risk analysis: Initiation, risk assessment, and risk management. The pest risk assessment for yellow pitaya from Colombia satisfies the requirements for the first two stages, initiation and risk assessment, by determining if a pest is a quarantine pest and evaluating the risk associated with its introduction via pitaya imported from Colombia. The pest risk assessment is qualitative, where risk is expressed in descriptive terms (high, medium, and low), rather than quantitative, where risk would be expressed in probabilities or frequencies. In addition to reflecting a qualitative risk assessment, our use of terms, such as ''may'' and ''likely'' reflects the fact that we cannot completely eliminate risk. Using more absolute terms, such as ''will'' and ''definitely,'' would be inaccurate. The pest risk management stage is not part of the pest risk assessment document that we prepared.

Pest risk management involves the process of reducing the risk of introduction of a quarantine pest and leads to a decision of whether to allow the importation of the commodity, and under what conditions. The conditions for pest risk management for imports of yellow pitaya fruit from Colombia were provided in the proposed rule. The risk management approach used to kill the internal feeders—*Anastrepha fraterculus* and the Medfly—is the vapor heat treatment. The risk management approach for external pests is inspection. We believe that the risks will be managed through inspection and treatment. In addition, in accordance with § 319.56–6, an inspector may refuse entry of a shipment that is contaminated with plant pests, soil, or other contaminants.

One commenter expressed concern that pesticides used on the pitaya crop in Colombia would not be allowed on similar fruit in the United States. The U.S. Food and Drug Administration (FDA) samples and tests imported fruits and vegetables for pesticide residues. If residue from a pesticide that is not approved in the United States is found, the FDA will deny the shipment's entry into the United States.

The commenter also disagreed with the statement in the pest risk assessment that the pesticides used on pitaya in Colombia would mitigate the pest risks. He questioned whether evidence exists that Colombia would administer the pesticides to all shipments of pitaya.

Colombia is a major producer of yellow pitaya and successfully exports fresh yellow pitaya fruit to dozens of countries. While any pesticides applied may help manage the risk of external pests, the risk management approach used for external pests is inspection. As discussed above, however, an inspector may refuse entry of a shipment if it is infested.

Citrus From Australia

We proposed to amend § 319.56–2v to add specific geographic areas to that section's list of areas in Australia from which citrus may be imported. One commenter recommended that we distinguish the Parish of Onley in the Shire of Mildura, Victoria, from the geographic subdivisions called ''hundreds.'' As the Parish of Onley is not one of the hundreds, we have changed § 319.56–2v(a)(1) in this final rule to distinguish the Parish of Onley from the listed hundreds. Data were submitted showing that the Parish of Onley and the additional hundreds meet the criteria for pest-free areas.

Another commenter stated that APHIS is proposing to allow new Australian production areas to export citrus to the United States but does not define its process for overseeing the continued freedom of those production areas from quarantine pests and diseases. Before a country conducts a survey, APHIS approves the survey protocol used to determine pest-free status. Once a free area is established, APHIS verifies that the area remains pest free. In addition to notification from the country concerning the maintenance of pest-free areas, we have several methods to verify that an area remains pest free. APHIS personnel are stationed overseas to evaluate the effectiveness of the survey and regulatory programs that the country of origin uses to maintain the pest-free areas. Another method is through agriculture inspection at the port of entry, as any findings of quarantine pests could indicate that an area is no longer a pest-free area. In the case of citrus from Australia, the regulations provide that in the event that surveys detect quarantine pests in the designated free areas, the citrus could be cold treated, if a treatment is available for the pest of concern, and remain eligible for importation into the United States.

The commenter correctly indicated that we do not define the process or our role in verifying the status of pest-free areas. Therefore, we are amending § 319.56–2(f) by stating that APHIS must approve the survey protocol used to determine pest-free status, and pest-free areas are subject to audit by APHIS to verify their status.

A commenter stated that APHIS is rewarding Australian producers with increased U.S. market access at the same time that Australia is dramatically restricting American growers from exporting to Australia. Our proposal and decision to allow imports of citrus from additional areas in Australia were based on data that indicated that the areas are free of destructive fruit flies.

One commenter correctly indicated that the value of citrus that Australia exported was underreported in the initial regulatory flexibility analysis at $37,000. We will adjust the final regulatory flexibility analysis to show $108.7 million as the value of Australian citrus exports for 2001.

Tomatoes

We proposed to amend § 319.56–2dd to allow the importation of tomatoes from Australia. We specified certain phytosanitary conditions under which the importation would be allowed to manage the risks presented by several species of fruit flies, loopers, worms, and caterpillars. One commenter recommended specific changes to these phytosanitary requirements.

First, the commenter recommended removing the requirement that McPhail traps be used and replacing that requirement with ''fruit fly traps of an approved type'' because specifying the type of fruit-fly trap is too restrictive. In response to this comment, we are removing the specification in § 319.56–2dd(e)(2) that the fruit-fly traps be McPhail traps and specifying instead that the traps be APHIS approved. As long as the regulations require the use of an APHIS-approved fruit-fly trap, phytosanitary security will not be affected.

Second, the commenter recommended rephrasing the wording used for the rate that fruit-fly traps must be set. The proposed rule stated that ''in all areas outside of the greenhouse and within 8 kilometers of the greenhouse, fruit-fly traps must be placed at the rate of at least four per square kilometer.'' The commenter reported that the current trapping grid in production areas in the fruit fly exclusion zone is based on a 1 km grid with a trap set at each corner

and recommended changing the wording concerning the placement of the traps to say ''placed on a 1 kilometer grid.'' Because this change in trap placement would not compromise the detection of any fruit flies in the area and will more accurately reflect trap placement, we are making this change in § 319.56–2dd(e)(2).

Third, the commenter recommended that the proposed requirement stating that ''outside of a registered greenhouse, if one fruit fly of any type is found within 2 kilometers, trap density and frequency of trap inspection must be increased to detect a reproducing colony'' be changed to ''outside of a registered greenhouse, if one fruit fly of the types specified in this notice is found within 2 kilometers of the facility, * * *'' Because this change would not affect the protection that the regulations provide, we have changed the requirement in § 319.56–2dd(e)(4) to state that the detection of one fruit fly of the species specified in § 319.56–2dd(e) would trigger an increase in trap density and inspections. In addition, we have made editorial changes to clarify that the threshold for cancellation of exports is the capture of two Medflies or three of the same species of *Bactrocera* within 2 kilometers of each other and within 30 days.

Finally, the commenter suggested including certain specifics in the operational workplan between the country of origin and the United States and excluding that information from the regulations. For example, the proposed rule would require that ''Capture of two Medflies or three of the same species of *Bactrocera* within 1 month will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of the infestation is determined and the fruit fly infestation is eradicated.'' The commenter stated that the distance between detections was based on detections within a 2 kilometer radius of the facility, but he recommended that we omit the specifics on the number of flies, distance between detections, and timeframe from the regulations and include that information in the operational workplan. We are not making any changes in response to this suggestion. We believe the specifics provide transparency in the regulations. These requirements, including that exports will be canceled from all registered greenhouses within 2 kilometers of the find, are consistent with our import requirements for tomatoes from Spain in § 319.56.2dd(a).

For the same reasons as discussed above under the heading ''Peppers from Israel,'' we are removing the proposed requirement for the sealing of shipping containers for tomatoes from Spain, France, Morocco and Western Sahara, and Australia (§ 319.56–2dd(a), (b), (c), and (e), respectively).

Another commenter requested that we review the use of ''pink'' and ''red'' to describe the ripeness of tomatoes in general. He contended that these terms are obsolete and potentially harmful with production of heirloom tomatoes of many different colors. While the regulations concerning the importations of tomatoes from Australia do not require that they be pink or red, the regulations do include this provision for certain other countries. If the pink or red criterion should become an issue with those importations, we will evaluate the adequacy of the pink or red criterion. However, at this time, we are not making any changes in response to this comment.

Persimmons From the Republic of Korea

We proposed to allow the importation of persimmons from the Republic of Korea under the conditions set forth in § 319.56–2kk. One commenter correctly stated that the proposed shipping restriction that would prohibit the entry of persimmons from the Republic of Korea into Hawaii, Puerto Rico, the Virgin Islands, and Guam would be unnecessary because the pest risk assessment was conducted for all areas of the United States. In addition, the commenter noted that persimmons from the Republic of Korea are currently imported into Guam. In response to this comment, we are removing the shipping restriction for persimmons from the Republic of Korea.

Another commenter objected to the importation of persimmons from the Republic of Korea, stating that APHIS is proposing an inadequate method of enforcement for ensuring that quarantine pests are controlled within production areas. Further, the commenter argued that establishing the orchard, which could be defined in many different ways, as the unit of reference for inspection and refusal of imports has no scientific justification.

We are allowing the importation of persimmons from the Republic of Korea into the United States under, among other things, the condition that the orchard where they were grown was inspected and found free of quarantine pests by the Republic of Korea's NPPO. After harvesting and before packaging a shipment of persimmons, the Republic of Korea's NPPO must inspect the shipment for quarantine pests, and if no pests are found, they must declare that on a phytosanitary certificate.

When the shipment enters the United States, it will be inspected again by a U.S. inspector who will decide whether to allow or refuse entry of the shipment. Costs associated with refusal of a shipment would be borne by the exporter; therefore, the exporter has added incentive to comply with the regulations. Traceback to an orchard would be accomplished through records kept by the Republic of Korea's NPPO. We regulate at the orchard level in many of our commodity import regulations, because doing so provides us with a meaningful way to eliminate products from the import chain when we identify problems; *i.e.*, we can limit enforcement actions to individual production sites rather than to entire growing areas. Based on our experience with mitigating pest risks and our success with inspection and enforcement, we believe that the conditions described above are adequate.

However, in response to this comment, we are making changes to clarify the regulations. In § 319.56–1, we are adding a definition of the term ''place of production'' that is consistent with the current IPPC definition. The definition for the term ''place of production'' is ''any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes.'' Because the definition of the term ''place of production'' includes the term ''field'' and ''production site'', we are also including definitions of those terms. The term ''field'' is defined using the IPPC definition of ''a plot of land with defined boundaries within a place of production on which a commodity is grown.'' The term ''production site'' is defined as ''a defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This could include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, or premises.'' In § 319.56–2kk, which concerns persimmons from the Republic of Korea, we are replacing the first occurrence of the word ''orchard'' with ''production site, which is an orchard.''

Cold Treatment

One commenter voiced concerns about added provisions to allow the entry of cold treated commodities when failures of this treatment protocol have yet to be completely addressed. This commenter stated that (1) although the cold treatment for Medfly has been lengthened, the suspected operational

failure has not been reviewed; (2) at least one live larva of false codling moth was intercepted last year from cold treated citrus from South Africa; and (3) there has been no overall review of the efficacy of cold treatment protocols in light of the interceptions of live insects following treatment.

In general, when pests are intercepted following treatment, APHIS investigates possible causes and responds appropriately. In the specific case of multiple live Medfly interceptions in clementines from Spain, APHIS halted clementine imports until we evaluated the situation, and the Secretary determined that it was no longer necessary to prohibit the importation or interstate movement of the fruits if a lengthened cold treatment was applied, along with other safeguards. In conducting our evaluation, we reviewed the cold treatment protocols for Medfly. APHIS' review of the cold treatment applied to the clementine shipments that contained live Medfly larvae yielded no evidence that the treatment was improperly applied. In an interim rule (67 FR 63529–63536, Docket No. 02–071–1, effective and published October 15, 2002), we extended the duration of cold treatment for Medfly and added a requirement that inspectors will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment.

In response to interceptions of the false codling moth from cold treated citrus in South Africa, we have taken three actions to help ensure fruit infested with false codling moth do not enter the United States with cold treated fruit. First, fruit entering through preclearance programs will be rejected before treatment if false codling moth is found. Second, additional fruit cutting is being instituted in the preclearance program. Third, at the ports of entry, fruit cold treated for false codling moth has been moved to the highest risk level—the number of fruit being cut on arrival is 150 per container or 1,500 for bulk shipments.

Permits

In § 319.56–3, we proposed to add provisions that oral permits may be issued in cases where no other importations are considered and the commodity is admissible with only inspection. One commenter questioned the ability to conduct tracebacks and keep records under the proposed oral permit provision. Specifically, the commenter asked how the oral request is documented, what form an oral request needs to be in, for what purposes does the oral request need to be made, and if an oral request can be denied, what would be the reasons for denial. The commenter stated that APHIS is also easing the burden upon importers in obtaining these permits by allowing oral permits to be satisfactory in securing inspection.

Allowing oral permits is a standard practice for noncommercial fruits or vegetables at the U.S. ports of entry. It is APHIS' policy to allow oral permits on a daily basis for fruits and vegetables brought in through passenger baggage. For these noncommercial shipments, no application is necessary. While oral permits are also issued to importers who are first-time importers of commercial shipments, the importers must apply in writing, which provides documentation of the importation as well as proof that the importers were informed of the requirements. Since this is a current practice, we do not view the amendments to the regulations as easing the burden upon importers. Instead, the amendments to the permit regulations will clarify and update our procedures.

As is the case with a fruit or vegetable that is imported with a written or electronic permit under § 319.56–6, entry of any fruit or vegetable that is being considered for importation under an oral permit would be denied if the inspector finds evidence of a pest or disease. The issuance of oral permits will not influence the requirement for a permit. Regardless of the form—oral, written, or electronic—a permit is required. Written or electronic permits are required from importers who routinely ship commercial products to the United States.

Based on the questions posed by the commenter, we are making several changes to further clarify the permit provisions. In the definitions in § 319.56–1 and throughout § 319.56–3, we have changed ''specific permit'' to *specific written permit.* Under the definition for specific written permit, we have specified that a specific written permit may also be issued by electronic means. In § 319.56–3(a), we are clarifying that for fruits and vegetables imported under an oral permit, a specific written permit is not required. Finally, we have rewritten the proposed § 319.56–3(d) to clarify that oral permits may be issued for noncommercial consignments if the commodity is admissible with inspection only. For commercial shipments, oral permits may be issued for fruits and vegetables arriving in the United States without a specific written permit if all applicable entry requirements are met and proof of application for a specific written permit has been supplied to an inspector.

In addition, we have modified the definition of *general permit* for clarity. As proposed , the definition referred to the authorization contained in paragraphs (b), (c), or (d) of § 319.56–2 for persons to import ''the articles named by the general permit.'' Because those paragraphs themselves serve as the general permit, we have amended the definition so that it refers to ''the articles named in those paragraphs.'' To further ensure clarity, we have amended § 319.56–2(b), (c), and (d) by adding a title to each of those paragraphs, *i.e.*, ''General permit for dried, cured, or processed fruits and vegetables,'' ''General permit for fruits and vegetables grown in Canada,'' and ''General permit for fruits and vegetables grown in the British Virgin Islands,'' respectively.

Miscellaneous Changes

In addition to amendments that we are making in response to comments received on the proposed rule, we are making several miscellaneous changes. We had proposed to amend § 319.56–2(e) by adding a footnote stating that fruits and vegetables from designated countries or localities that are subject to specific import requirements prescribed elsewhere in the regulations are ''not subject to the regulations in this section [*i.e.*, § 319.56–2] unless specified otherwise.'' In this final rule, we have amended that footnote to reflect our intent that such fruits and vegetables will not be subject to the regulations in paragraph (e) of § 319.56–2, rather than the entire section.

As proposed, we are amending the lists of ports in § 319.56–2d(b)(1) where cold treatment may be conducted if it was not conducted in transit to the United States. In addition, we are including the port of Corpus Christi, TX, to the list of ports as a result of a final rule (68 FR 2684–2686, effective and published January 21, 2003, Docket No. 00–068–3) that was published after the proposal for this rule. Because the ports listed in § 319.56–2d(b)(1) are also listed in § 319.56–2x(b) as ports where fruits and vegetables that require treatment for fruit flies may arrive when treatment has not been conducted before arrival in the United States, we are replacing the list of ports in § 319.56–2x(b) with a reference to § 319.56–2d(b)(1), thus eliminating the need to update both lists should future amendment be needed.

We are removing and reserving the administrative instructions governing importation of grapefruit, lemons, and oranges from Argentina in § 319.56–2f based on *Harlan Land Company,* et al. vs. *United States Department of*

Agriculture, et al., Case #CV–F–00–6106–REC/LJO (D. Ariz. Sept. 27, 2001).

We are amending the geographic description in § 319.56–2q of the free areas for importing citrus from South Africa to include the Warrenton magisterial district (a political division similar to a county in the United States) in the Northern Cape Province. Although the data submitted by South Africa, which we made available for review in the proposed rule, demonstrated that Warrenton and Hartswater magisterial districts are free of citrus black spot, our proposed amendment erroneously referred only to the Hartswater magisterial district. Because the production area for which the data were submitted falls within two different magisterial districts, § 319.56–2q refers to both the Hartswater and Warrenton magisterial districts in this final rule.

In a new paragraph for peppers from Israel (§ 319.56–2u(b)(9)) and the new section for persimmons from Korea (§ 319.56–2kk), we have changed the specific reference to each country's agricultural department to the more general reference of the national plant protection organization. We have made these changes to avoid the need to amend the regulations should the specific name of the national plant protection organization change.

Previously, § 319.56–3 pertained to applications for permits for importation of fruits and vegetables, and § 319.56–4 explained the permit procedures for importing fruits and vegetables. One of the changes we are making to the permit provisions is combining § 319.56–3 and § 319.56–4 into § 319.56–3. Another change is the addition of a new section § 319.56–4 for amendment, denial, or withdrawal of permits. These changes necessitate replacing references to the former § 319.56–4 with references to § 319.56–3. We have made this change in §§ 319.56a, 319.56–2b, 319.56–2n, 319.56–2o, 319.56–2bb, and 319.56–2ff.

In § 319.56–6, ''Inspection and other requirements at the port of first arrival,'' we proposed to amend paragraph (b) to require that the owner or the agent makes full disclosure of the type, quantity, and country of origin of all fruits and vegetables in the shipment on an invoice or similar document and present that document to an inspector prior to moving the fruits or vegetables. In this final rule, we have added language to clarify that the full disclosure of all fruits and vegetables in the shipment may be made either orally for noncommercial shipments or on an invoice or similar document for commercial shipments. To clarify that the fruit or vegetable must be released for movement prior to moving the fruits or vegetables from the port, we have added that movement from the port must be in accordance with paragraph (d) of § 319.56–6, which specifies the requirements for release for movement.

Finally, we have renumbered several footnotes in the subpart so that they will be sequential throughout the regulations and made other minor, nonsubstantive changes.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of certain fruits and vegetables from certain countries while continuing to protect against the introduction of quarantine pests into the United States.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relieved restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule 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.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

This final rule amends the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to such disinfection at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and spread of quarantine pests.

We are recognizing areas in several countries as free from certain fruit flies; removing the Province of Arica in Chile as an area free from Medfly; amending the packing requirements for certain commodities; expanding locations in the northeastern United States where cold treatment can be conducted; updating and clarifying restrictions on entry of fruits and vegetables; updating and clarifying permit procedures including amendment, denial, or withdrawal of permits; requiring full disclosure of fruits and vegetables at the port of first arrival and clarifying the conditions under which they are released for movement; and making other miscellaneous changes.

We have used all available data to estimate the potential economic effects of allowing the fruits and vegetables specified in this rule to be imported into the United States. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on: (1) The quantity of certain fruits and vegetables produced domestically; (2) the quantity of potential imports; and (3) the degree to which imported fruits and vegetables will displace existing imported or domestic products. In our proposed rule, we asked the public to provide such data.

In response to comments that we received, this analysis provides additional information for rambutan from Honduras, fennel from El Salvador, Guatemala, and Nicaragua, and citrus from Australia that was not contained in the analysis we included in the proposed rule. (The specific comments are discussed earlier in this document under the headings ''Rambutan from Central America and Mexico,'' ''Fennel from El Salvador, Guatemala, and Nicaragua,'' and ''Citrus from Australia.'') We have made additional changes to the data concerning citrus from Australia and South Africa and have included the Warrenton magisterial district in our discussion of citrus from South Africa.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities that may be imported into the United States under this final rule are not available. However, since most fruit and

vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small. The potential economic effects of this final rule are discussed below by commodity and country of origin.

Citrus from Australia. The regulations contain provisions for the importation of citrus from certain areas in Australia. In this rule, we are adding new areas in Australia from which citrus may be imported into the United States. In 2001, while the United States produced almost 15 million metric tons of citrus, Australia produced 604,000 metric tons, which is approximately 4 percent of U.S. production. That same year, the value of U.S. citrus exports reached almost $591 million, whereas the value of Australian citrus exports reached $108.7 million. In 2001, the United States imported more than $298 million of citrus fruits; of that amount, $22 million, or 7 percent, was imported from Australia. Because the U.S. production of citrus is supplemented with citrus imports in order to satisfy the domestic demand, we do not believe that allowing the importation of citrus from additional areas in Australia will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of citrus will benefit from the increase in its supply and availability.

Tomatoes from Australia. In 2000, the United States produced over 11 million metric tons of tomatoes, exported 208,564 metric tons, and imported 730,063 metric tons. Australia produced 413,617 metric tons of tomatoes, which is less than the total U.S. imports, and exported 3,807 metric tons in 2000. Because the U.S. production of tomatoes is supplemented with tomato imports in order to satisfy the domestic demand, we do not believe that allowing the importation of tomatoes from Australia will have a significant effect on either U.S. consumers or producers.

Peppers from Chile. From 1997 to 2000, the United States production of peppers (*Capsicum annuum*) increased 30 percent, from 678,000 metric tons to 885,630 metric tons. However, the U.S. demand for imports of peppers increased by 70 percent during the same time period. Although no trade data on peppers from Chile are available, we do not believe that peppers imported from Chile will have a significant impact on U.S. producers or other small entities.

Rambutan from Guatemala. There are no data available regarding domestic production of rambutan in the United States. In Guatemala, only one 280-square-kilometer farm commercially produces rambutan. Recent production data for rambutan in Guatemala indicate about 117 metric tons are produced per year. We believe any exports to the United States will be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers.

Figs from Mexico. According to the Food and Agriculture Organization of the United Nations, from 1997 to 2000, the United States produced an average of 47,000 metric tons of fresh figs per year. The U.S. production of fresh figs remained stable for those 4 years, but U.S. imports of fresh figs increased from 221 metric tons in 1997 to 427 metric tons in 2000, indicating an increase in the demand for fresh figs in the United States. From 1997 to 2000, Mexico produced an average of 3,000 metric tons of fresh figs per year. We do not expect a significant economic effect on U.S. producers, whether small or large, or consumers, because the U.S. demand for figs appears to be exceeding the U.S. production of fresh figs.

Citrus from South Africa. The regulations contain provisions for the importation of citrus from the Western Cape Province of South Africa. In this document, we are adding the Hartswater and Warrenton magisterial districts in the Northern Cape Province of South Africa to the areas from which citrus can be imported into the United States. In 2001, while the United States produced almost 15 million metric tons of citrus, South Africa produced 1.4 million metric tons, which is approximately 10 percent of U.S. production. That same year, the value of U.S. citrus exports reached almost $591 million, and the value of South African citrus exports reached $204.5 million. In 2001, the United States imported more than $298 million of citrus fruits; of that amount, $26,348,000, or 9 percent, was imported from South Africa. Because the U.S. production of citrus is supplemented with citrus imports in order to satisfy the domestic demand, we do not believe that expanding the areas from which the United States may import citrus from South Africa will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of citrus will benefit from the increase in its supply and availability.

Peppers from Spain. From 1997 to 2000, the United States production of peppers (*Capsicum annuum*) increased 30 percent, from 678,000 metric tons to 885,630 metric tons. However, the U.S. demand for imports of peppers increased by 70 percent during the same time period. In 2000, the United States produced 885,630 metric tons of peppers and exported 71,478 metric tons. Of the 346,654 metric tons of peppers that the United States imported in 2000, 2,269 metric tons, or less than 1 percent, were imported from the Almeria Province of Spain. Under this rule, the United States may accept imports of peppers from the additional province of Alicante in Spain. Considering that the U.S. production of peppers is supplemented with imports of peppers in order to satisfy the domestic demand, we do not believe that allowing the importation of tomatoes from an additional province in Spain will have a significant effect on either U.S. consumers or producers.

Tomatoes from Spain. In 2000, the United States produced over 11 million metric tons of tomatoes, exported 208,564 metric tons, and imported 730,063 metric tons. Of the tomatoes imported into the United States, 5,650 metric tons, or less than 1 percent, were imported from Spain. Considering that the U.S. production of tomatoes is supplemented with imports of tomatoes in order to satisfy the domestic demand, we do not believe that allowing the importation of pink or red tomatoes from the municipalities of Albuñol and Carchuna in the Granada Province in Spain will have a significant effect on either U.S. consumers or producers.

Unavailability of Data. Due to the unavailability of data, we are unable to determine the effect that the importation of the following commodities will have on U.S. producers or consumers:

- Rambutan from Belize, Costa Rica, El Salvador, Honduras, Mexico, Nicaragua, and Panama.
- Longan from China.
- Cape gooseberries and yellow pitaya from Colombia.
- Loroco from El Salvador, Honduras, and Nicaragua.
- Parsley and rosemary from El Salvador.
- Waterlily or lotus and German chamomile from El Salvador, Guatemala, Honduras, and Nicaragua.
- Basil from Honduras.
- Yam-bean or Jicama root and oregano or sweet marjoram from El Salvador and Honduras.
- Yard-long bean from Nicaragua.
- Persimmon from Spain.

Fennel from El Salvador, Guatemala, and Nicaragua. There are no data available on the production of fennel in El Salvador, Guatemala, or Nicaragua. Fennel is produced in Arizona and California. While the estimated total value or quantity produced in the United States is not known, in 2001, Monterey County, CA, produced an estimated 741 acres of fennel valued at $3,303,000, and Santa Barbara County,

CA, produced an estimated 261 acres valued at $1.5 million. Fennel imports will directly compete with domestic production, and domestic producers may lose market share. Domestic consumers will benefit if increased competition results in lower prices. The costs associated with imports will likely be borne by a small group of domestic producers, while the more diffuse group of consumers will enjoy the benefits. Benefits enjoyed by consumers will likely be too small to be measured or even noticed.

Rambutan from Honduras. There are no data available on the production of rambutan in the United States. Honduras reported that there are over 125 growers of rambutan in that country. Honduras estimated that it would export 1,500 metric tons of rambutan from 250 hectares of rambutan that will be in production in 2003.

Persimmons from the Republic of Korea. In the United States, persimmons are a specialty crop produced on a small scale mainly in California and Texas; thus, no data on the U.S. production of persimmons are available. Therefore, we were unable to determine the effect this final rule would have on U.S. producers or consumers of persimmons. In 2000, South Korea produced 288,000 metric tons of persimmons, imported 2 metric tons, and exported 4,258 metric tons.

Yam-bean from Nicaragua. There are no data available regarding production of yam-bean or Jicama root in the United States. While the production of yam-bean or Jicama root in Nicaragua has remained stable for the past 3 years at approximately 133,000 metric tons per year, we are unable to determine the effect that imports of yam-bean will have on U.S. producers or consumers.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0210.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

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

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 300.1, paragraph (a) is amended as follows:

■ a. In paragraph (a)(5), by removing ''T107–a,'' and by removing the word ''and'' after the words ''September 2002;''.

■ b. In paragraph (a)(6), by removing the period and adding the word ''; and'' in its place.

■ c. By adding a new paragraph (a)(7) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(7) Treatments T106–e, T107–a, and T107–j, dated April 2003.

* * * * *

■ 3. A new § 300.5 is added to read as follows:

§ 300.5 International Standards for Phytosanitary Measures.

(a) The International Standards for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas,'' which was published February 1996 by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Availability*. Copies of International Standards for Phytosanitary Measures Publication No. 4:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW., Suite 700, Washington, DC; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; or

(3) May be viewed on the APHIS Web site at *http://www.aphis.usda.gov/ppq/pim/standards/*. PART≤

PART 319—FOREIGN QUARANTINE NOTICES

■ 4. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450 and 7701–7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–5 [Amended]

■ 5. In § 319.37–5, paragraph (b)(3)(xlii), the word ''*necratrix*'' is removed and the word ''*necatrix*'' is added in its place.

§ 319.56 [Amended]

■ 6. In § 319.56, paragraph (a)(2), the words ''injurious insects, including fruit and melon flies (Tephritidae)'' are removed and the words ''quarantine pests'' are added in their place.

§ 319.56a [Amended]

■ 7. In § 319.56a, paragraph (b), the citations ''§§ 319.56–3 and 319.56–4'' are removed and the citation ''§ 319.56–3'' is added in their place.

■ 8. Section 319.56–1 is amended by adding, in alphabetical order, new definitions for *field, general permit, permit, place of production, production*

site, quarantine pest, and *specific written permit* to read as follows:

§ 319.56–1 Definitions.

* * * * *

Field. A plot of land with defined boundaries within a place of production on which a commodity is grown.

* * * * *

General permit. The authorization contained in § 319.56–2(b), (c), or (d) for any person to import the articles named in those paragraphs, in accordance with the requirements specified in those paragraphs, without being issued a specific written permit.

* * * * *

Permit. A written or oral authorization, including by electronic methods, to import fruits or vegetables in accordance with the regulations in this subpart.

Place of production. Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes.

* * * * *

Production site. A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, or premises.

Quarantine pest. A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.

Specific written permit. A written or electronic authorization issued by APHIS to a person to import a particular fruit or vegetable from a specified country in accordance with the requirements of this subpart and any additional conditions that may be assigned.

■ 9. Section 319.56–2 is amended as follows:

■ a. In paragraphs (b), (c), and (d), by adding a heading to read as set forth below.

■ b. In paragraph (e), by revising the introductory text to read as set forth below.

■ c. In paragraph (e)(1), by removing the words ''injurious insects, including fruit and melon flies (Tephritidae)'' and adding the words ''quarantine pests'' in their place.

■ d. In paragraph (e)(2), by removing the words ''injurious insects that attack it'' and adding the words ''quarantine pests'' in their place.

■ e. In paragraph (e)(3), by removing the words '', its importation can be authorized without risk,''; and by removing the words ''injurious insects'' and adding the words ''quarantine pests'' in their place.

■ f. In paragraph (e)(4), by removing the words '', its importation can be authorized without risk,'' and by removing the words ''certain injurious insects'', ''certain insects'', and ''injurious insects'' and adding the words ''quarantine pests'' in their place.

■ g. By revising paragraphs (f) and (h) and the OMB citation at the end of the section to read as set forth below.

■ h. In paragraph (j), by adding the words ''except Arica'' immediately after the words ''all Provinces in Chile''.

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(b) *General permit for dried, cured, or processed fruits and vegetables.* * * *

(c) *General permit for fruits and vegetables grown in Canada.* * * *

(d) *General permit for fruits and vegetables grown in the British Virgin Islands.* * * *

* * * * *

(e) Any other fruit or vegetable, except those restricted to certain countries and districts by special quarantine,[1] other orders, or provisions of the regulations in this subpart[2] may be imported from any country under a permit issued in accordance with this subpart and upon compliance with the regulations in this subpart, at the ports authorized in the permit, if the U.S. Department of Agriculture, after reviewing evidence presented to it, is satisfied that the fruit or vegetable either:

* * * * *

(f) Before the Administrator may authorize importation of a fruit or vegetable under paragraphs (e)(3) or (4) of this section, he or she must determine that the fruit or vegetable is being imported from an area that is free of the pest or pests in accordance with the criteria for establishing freedom found in International Standard for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter. APHIS must approve the survey protocol used to determine pest-free status, and pest-free areas are subject to audit by APHIS to verify their status. When used to authorize importation under paragraph (e)(3) of this section, the criteria must be applied to all quarantine pests that attack the fruit or vegetable; when used to authorize importation under paragraph (e)(4) of this section, the criteria must be applied to those particular quarantine pests from which the area or district is to be considered free.

* * * * *

(h) The Administrator has determined that the following areas in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Comondu, La Paz, Loreto, Los Cabos, and Mulegé in the State of Baja California Sur; the municipalities of Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; the municipalities of Ahome, Choix, El Fuerte, Guasave, and Sinaloa de Leyva in the State of Sinaloa; and the municipalities of Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navojoa, Pitiquito, Plutarco Elias Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Ignacio Rio Muerto in the State of Sonora. Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0210)

§ 319.56–2b [Amended]

■ 10. In § 319.56–2b, paragraph (a)(1), the citation ''§ 319.56–4'' is removed and the citation ''§ 319.56–3'' is added in its place.

■ 11. Section 319.56–2d is amended as follows:

■ a. By redesignating footnote 1 as footnote 3.

■ b. By revising paragraph (b)(1) to read as set forth below.

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

[1] The importation of citrus fruits into the United States from eastern and southeastern Asia and certain other areas is restricted by the Citrus Fruit Quarantine, § 319.28.

[2] Fruits and vegetables from designated countries or localities that are subject to specific import requirements prescribed elsewhere in this subpart are not subject to the regulations in paragraph (e) of this section unless specified otherwise. Such fruits and vegetables are, however, subject to all other general requirements contained in other sections of this subpart.

(b) * * *

(1) Places of precooling and refrigeration. Refrigeration may be conducted while the fruit is on shipboard in transit to the United States. If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Administrator and located in the area north of 39° longitude and east of 104° latitude or at one of the following ports: The maritime ports of Wilmington, NC, Seattle, WA, Corpus Christi, TX, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Washington Dulles International Airport, Chantilly, VA. Fruit that is to be refrigerated in transit must be precooled either at a dockside refrigeration plant prior to loading aboard the carrying vessel, or aboard the carrying vessel. Refrigeration must be completed in the container, compartment, or room in which it is begun.

* * * * *

§ 319.56–2f [Removed and reserved]

■ 12. Section 319.56–2f is removed and reserved.

■ 13. Section 319.56–2j is amended as follows:

■ a. By redesignating footnotes 2 and 3 as footnotes 4 and 5, respectively.

■ b. By revising paragraph (a)(2) to read as set forth below.

■ c. In paragraph (a)(4), by removing the words ''this section'' and ''paragraph (a)(2) of this section'' and adding the words ''the PPQ Treatment Manual'' in their place; by adding the words ''or she'' immediately after the word ''he''; and by removing the word ''insect'' and adding the word ''quarantine'' in its place.

■ d. In paragraph (a)(5), by adding the words ''or her'' immediately after the word ''his''.

■ e. In paragraph (a)(6), by removing the words ''paragraph (a)(2) of this section'' and adding the words ''the PPQ Treatment Manual'' in their place.

§ 319.56–2j Conditions governing the entry of apples and pears from Australia (including Tasmania) and New Zealand.[4]

* * * * *

(a) * * *

(2) *Approved fumigation.* Fumigation with methyl bromide must be in accordance with the PPQ Treatment Manual, which is incorporated by reference in § 300.1 of this chapter.

* * * * *

§ 319.56–2k [Amended]

■ 14. In § 319.56–2k, footnote 1 is redesignated as footnote 6.

§ § 319.56–2n and 319.56–2o [Amended]

■ 15. In § 319.56–2n and § 319.56–2o, the introductory text of each section is amended by removing the citation ''§ 319.56–4'' and adding the citation ''§ 319.56–3'' in its place.

§ 319.56–2p [Amended]

■ 16. Section 319.56–2p is amended as follows:

■ a. In paragraph (a)(3)(i), by adding the words ''(including Hispaniola)'' immediately after the words ''the Greater Antilles''.

■ b. In paragraph (f), by removing the words ''injurious insects'' and adding the words ''quarantine pests'' in their place.

§ 319.56–2q [Amended]

■ 17. Section 319.56–2q is amended as follows:

■ a. In the introductory text of the section and in paragraph (a), by adding the words ''the Hartswater and Warrenton magisterial districts in the Northern Cape Province or'' immediately before the words ''the Western Cape Province''.

■ b. In paragraph (b), introductory text, by removing the words ''genus *Ceritatis*'' and adding the words ''genera *Ceratitis*'' in their place.

■ 18. In § 319.56–2t, the table is amended as follows:

■ a. By adding entries, in alphabetical order, under Belize, for rambutan; under Chile, for pepper; under Costa Rica, for rambutan; under El Salvador, for fennel, German chamomile, loroco, oregano or sweet marjoram, parsley, rambutan, rosemary, waterlily or lotus, and yam-bean or Jicama root; under Guatemala, for fennel, German chamomile, rambutan, and waterlily or lotus; under Honduras, for basil, German chamomile, loroco, oregano or sweet marjoram, rambutan, waterlily or lotus, and yam-bean or Jicama root; under Mexico, for fig and rambutan; under Nicaragua, for fennel, German chamomile, loroco, rambutan, waterlily or lotus, yam-bean or Jicama root; and under Panama, for rambutan to read as set forth below.

■ b. Under Guatemala, by placing the entry for ''Jicama'' in alphabetical order.

■ c. By revising, under Guatemala, the entries for loroco and rosemary, and, under Spain, the entry for tomato, to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
Belize			
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Belizean department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
Chile			

[4] Apples and pears from Australia (excluding Tasmania) where certain tropical fruit flies occur are also subject to the cold treatment requirements of § 319.56–2d.

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
	Pepper	*Capsicum annuum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a fruit-fly-free area—see § 319.56–2(j).)
*	*	*	* * * *
Costa Rica			
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Costa Rican department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Costa Rican department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
El Salvador			
*	*	*	* * * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	German chamomile.	*Matricaria recutita* and *Matricaria chamomilla*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp.	Flower, leaf, and stem.
	Oregano or sweet marjoram.	*Origanum* spp.	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Parsley	*Petroselinum crispum*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by El Salvador's department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of El Salvador's department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Rosemary	*Rosmarinus officinalis*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Yam-bean or Jicama root.	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
Guatemala			
*	*	*	* * * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	German chamomile.	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp	Flower and leaf.
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Guatemalan department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Guatemalan department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Rosemary	*Rosmarinus officinalis*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
Honduras			
*	*	*	* * * *
	Basil	*Ocimum basilicum*	Leaf and stem. (Must be accompanied by a phytosanitary certificate issued by the Honduran department of agriculture stating that the fruit is free from *Planococcus minor.* Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	German chamomile.	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp.	Flower and leaf.
	Oregano or sweet marjoram.	*Origanum* spp.	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Honduran department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Honduran department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Yam-bean or Jicama root.	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI and Guam.'')
*	*	*	* * * *
Mexico			
*	*	*	* * * *
	Fig	*Ficus carica*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico stating that the fruit originated in a fruit-fly-free area—see § 319.56–2(h). Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus P. minor,* and *Pseudococcus landoi* and; (2) all damaged fruit were removed from the shipment prior to export under the supervision of the national plant protection organization of Mexico. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
Nicaragua			
*	*	*	* * * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	German chamomile.	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp	Leaf and stem.
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Nicaraguan department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Nicaraguan department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Yam-bean or Jicama root.	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
Panama			

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by Panama's department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of Panama's department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	*
Spain			
*	*	*	*
	Tomato	*Lycopersicon esculentum*	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from Almeria Province, Murcia Province, or the municipalities of Albuñol and Carchuna in Granada Province and only in accordance with § 319.56–2dd of this subpart).
*	*	*	*

* * * * *

■ 19. In § 319.56–2u, paragraph (b)(7) is revised and new paragraphs (b)(8) and (b)(9) and an OMB citation are added to read as follows:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

(b) * * *

(7) Prior to movement from approved insect-proof screenhouses in the Arava Valley, the peppers must be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins; covered non-insect-proof cartons must be placed in shipping containers.

(8) The packaging safeguards required by paragraph (b)(7) of this section must remain intact at all times during the movement of the peppers to the United States and must be intact upon arrival of the peppers in the United States.

(9) Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization stating that the conditions of paragraphs (b)(1) through (b)(7) of this section have been met.

(Approved by the Office of Management and Budget under control number 0579–0210)

■ 20. In § 319.56–2v, paragraph (a)(1) is revised to read as follows:

§ 319.56–2v Conditions governing the entry of citrus from Australia.

(a) * * *

(1) The Riverland district of South Australia, defined as the county of Hamley; the geographical subdivisions, called hundreds, of Bookpurnong, Cadell, Eba, Fisher, Forster, Gordon, Hay, Holder, Katarapko, Loveday, Markaranka, Morook, Murbko, Murtho, Nildottie, Paisley, Parcoola, Paringa, Pooginook, Pyap, Ridley, Skurray, Stuart, and Waikerie; and the Parish of Onley of the Shire of Mildura, Victoria;

* * * * *

■ 21. Section 319.56–2x is amended as follows:

■ a. In paragraph (a), the table is amended by adding, in alphabetical order, under China, an entry for longan; a new entry for Colombia; under Nicaragua, an entry for yard-long-bean; and under Spain, an entry for persimmon to read as set forth below.

■ b. By revising paragraph (b) to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
China			
*	*	*	*
	Longan	*Dimocarpus longan*	Fruit.
Colombia	Cape gooseberry	*Physalis peruviana*	Fruit.
	Yellow pitaya	*Selenicereus megalanthus*	Fruit.
*	*	*	*
Nicaragua			
*	*	*	*
	Yard-long-bean	*Vigna unguiculata*	Pod.

Country/locality	Common name	Botanical name	Plant part(s)
* * * * * * *			
Spain			
* * * * * * *			
	Persimmon	*Diospyros khaki*	Fruit.
* * * * * * *			

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed in the table in this section and requiring treatment for fruit flies may arrive in the United States only at a port listed in § 319.56–2d(b)(1) of this subpart.

§ 319.56–2y [Amended]

■ 22. In § 319.56–2y, footnote 1 is redesignated as footnote 7.

§ 319.56–2z [Amended]

■ 23. In § 319.56–2z, footnote 1 is redesignated as footnote 8.

§ 319.56–2bb [Amended]

■ 24. In § 319.56–2bb, the introductory paragraph is amended by removing the citation ''§ 319.56–4'' and adding the citation ''§ 319.56–3'' in its place.

■ 25. Section 319.56–2dd is amended as follows:

■ a. By redesignating footnotes 1, 2, and 3 as footnotes 9, 10, and 11, respectively.

■ b. In paragraphs (a)(1) and (a)(7), by adding the words ''Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada'' immediately after the word ''Almeria''.

■ c. By revising paragraphs (a)(6), (b)(5), (c)(6), and (d)(2) and newly redesignated footnotes 10 and 11 to read as set forth below.

■ d. By adding a new paragraph (e) and revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

(a) * * *

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

* * * * *

(b) * * * [10]

* * * * *

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh screen or plastic tarpaulin. These safeguards must be intact upon arrival in the United States; and

* * * * *

(c) * * * [11]

(6) The tomatoes must be packed within 24 hours of harvest and must be pink at the time of packing. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and export to the United States. These safeguards must be intact upon arrival in the United States; and

* * * * *

(d) * * *

(2) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and awaiting packing. They must be packed in insect-proof cartons or insect-proof mesh or plastic tarpaulin under APHIS monitoring for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

* * * * *

(e) *Tomatoes from Australia.* Tomatoes (fruit) (*Lycopersicon esculentum*) may be imported into the United States from Australia only under the following conditions:

(1) The tomatoes must be grown in greenhouses registered with, and inspected by, the Australian Quarantine Inspection Service (AQIS);

(2) Two months prior to shipping, AQIS must inspect the greenhouse to establish its freedom from the following quarantine pests: *Bactrocera aquilonis, B. cucumis, B. jarvis, B. neohumeralis, B. tryoni, Ceratitis capitata, Chrysodeixis argentifera, C. erisoma, Helicoverpa armigera, H. punctigera, Lamprolonchaea brouniana, Sceliodes cordalis,* and *Spodoptera litura.* AQIS must also set and maintain fruit fly traps inside the greenhouses and around the perimeter of the greenhouses. Inside the greenhouses, the traps must be APHIS-approved fruit fly traps, and they must be set at the rate of six per hectare. In all areas outside the greenhouse and within 8 kilometers of the greenhouse, fruit fly traps must be placed on a 1 kilometer grid. All traps must be checked at least every 7 days;

(3) Within a registered greenhouse, capture of a single fruit fly or other quarantine pest will result in immediate cancellation of exports from that greenhouse until the source of the infestation is determined, the infestation has been eradicated, and measures are taken to preclude any future infestation;

(4) Outside of a registered greenhouse, if one fruit fly of the species specified in paragraph (e)(2) of this section is captured, the trap density and frequency of trap inspection must be increased to detect a reproducing colony. Capture of two Medflies or three of the same species of *Bactrocera* within 2 kilometers of each other and within 30 days will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the finds until the source of the infestation is determined and the fruit fly infestation is eradicated;

(5) AQIS must maintain records of trap placement, checking of traps, and any fruit fly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house or while awaiting packing. They must be placed in insect-proof cartons or securely covered with insect-proof mesh or

[10] *See* footnote 9 in paragraph (a) of this section.

[11] *See* footnote 9 in paragraph (a) of this section.

plastic tarpaulin for transport to the airport or other shipping point. These safeguards must be intact upon arrival in the United States; and

(7) Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by AQIS stating ''These tomatoes were grown, packed, and shipped in accordance with the requirements of § 319.56–2dd(e) of 7 CFR.''

(Approved by the Office of Management and Budget under control numbers 0579–0131 and 0579–0210)

§ 319.56–2ff [Amended]

■ 26. In § 319.56–2ff, the introductory text is amended by removing the citation ''§ 319.56–4'' and adding the citation ''§ 319.56–3'' in its place.

■ 27. Section 319.56–2gg is amended as follows:

■ a. In paragraphs (a) and (h), by adding the words ''Alicante or'' before the words ''Almeria Province''.

■ b. By revising paragraph (e) and adding an OMB citation at the end of the section to read as set forth below.

§ 319.56–2gg Administrative instructions; conditions governing the entry of peppers from Spain.

* * * * *

(e) The peppers must be safeguarded from harvest to export by insect-proof mesh or plastic tarpaulin, including while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States;

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0210)

§ 319.56–2jj [Amended]

■ 28. In § 319.56–2jj, footnote 1 is redesignated as footnote 12.

■ 29. A new § 319.56–2kk is added to read as follows:

§ 319.56–2kk Persimmons from the Republic of Korea.

Persimmons (fruit) (*Disopyros khaki*) may be imported into the United States from the Republic of Korea only under the following conditions:

(a) The production site, which is an orchard, where the persimmons are grown must have been inspected at least once during the growing season and before harvest for the following pests: *Conogethes punctiferalis, Planococcus kraunhiae, Stathmopoda masinissa, and Tenuipalpus zhizhilashiviliae;*

(b) After harvest, the persimmons must be inspected by the Republic of Korea's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a) of this section before the persimmons may be shipped to the United States;

(c) Each shipment of persimmons must be accompanied by a phytosanitary certificate issued by the Republic of Korea's NPPO stating that the fruit is free of *Conogethes punctiferalis, Planococcus kraunhiae, Stathmopoda masinissa, and Tenuipalpus zhizhilashiviliae.*

(d) If any of the pests listed in paragraph (a) of this section are detected in an orchard, exports from that orchard will be canceled until the source of infestation is determined and the infestation is eradicated.

(Approved by the Office of Management and Budget under control number 0579–0210)

■ 30. Sections 319.56–3 and 319.56–4 are revised to read as follows:

§ 319.56–3 Applications for permits for importation of fruits and vegetables; issuance of permits.

(a) *Permit required.* Except for fruits or vegetables that may be imported under the general permit provided in § 319.56–2(b), (c), and (d) or for fruits and vegetables imported under an oral permit in accordance with paragraph (d) of this section, no fruits or vegetables may be imported unless a specific written permit has been issued for the fruits or vegetables and unless the fruits or vegetables meet all other applicable requirements of this subpart and any other requirements specified by APHIS in the specific written permit.

(b) *Applying for a specific written permit.* Applications must be submitted in writing or electronically and should be made in advance of the proposed shipment and provided to the Plant Protection and Quarantine program.[13] Applications must include the country or locality of origin of the fruits or vegetables, the port of first arrival, the name and address of the importer in the United States, and the identity and quantity of the fruit or vegetable.

(c) *Issuance of permits.* If APHIS approves the application, APHIS will issue a permit specifying the conditions applicable to the importation of the fruit or vegetable.

(d) *Issuance of oral permits.* Oral permits may be issued for noncommercial shipments if the commodity is admissible with inspection only. Oral permits may be issued for commercial shipments of fruits and vegetables arriving in the United States without a specific written permit if all applicable entry requirements are met and proof of application for a specific written permit has been supplied to an inspector.

(Approved by the Office of Management and Budget under control number 0579–0049)

§ 319.56–4 Amendment, denial, or withdrawal of permits.

(a) The Administrator may amend, deny, or withdraw a permit at any time if he or she has determined that conditions exist that present an unacceptable risk of the fruit or vegetable introducing quarantine pests into the United States. If the withdrawal is oral, the withdrawal of the permit and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances permit.

(b) Any person whose permit has been amended, denied, or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the decision. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully amended, denied, or withdrawn. The Administrator will grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person who has filed an appeal requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. A permit withdrawal will remain in effect pending resolution of the appeal or the hearing.

■ 31. Section § 319.56–6 is amended as follows:

■ a. By redesignating footnote 1 as footnote 14.

■ b. By revising paragraphs (b) and (d) to read as follows:

§ 319.56–6 Inspection and other requirements at the port of first arrival.

* * * * *

(b) *Assembly for inspection.* Any person moving fresh fruits and vegetables into the United States must offer those agricultural products for entry at the U.S. port of first arrival. The owner or the agent must make full

[13] Application for permits to import fruit and vegetables under this subpart may be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 136, Riverdale, MD 20737–1236; on the Internet using the APHIS Import Authorization System, *https://Web01.aphis.usda.gov/IAS.nsf/;* or by fax (301) 734–5786.

disclosure of the type, quantity, and country of origin of all fruits and vegetables in the shipment, either orally for non-commercial shipments or on an invoice or similar document for commercial shipments, and present that document to an inspector prior to moving the fruits or vegetables from the port in accordance with paragraph (d) of this section. All fruits and vegetables must be accurately disclosed and made available to an inspector for examination. The owner or agent must assemble the fruits and vegetables for inspection at the port of first arrival, or at any other place designated by an inspector, and in a manner designated by the inspector.

* * * * *

(d) *Release for movement.* No person may move a fruit or vegetable from the U.S. port of first arrival unless an inspector has:

(1) Inspected the fruit or vegetable and released it;

(2) Ordered treatment at the port of first arrival and, after treatment, released it;

(3) Authorized movement to another location for treatment, further inspection, or destruction;

(4) Ordered the fruit or vegetable to be re-exported; or

(5) Waived the inspection.

* * * * *

Done in Washington, DC, this 18th day of June, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–15908 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–34–P

Federal Register

Wednesday,
June 25, 2003

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7519–4]

Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Federal regulations to withdraw aquatic life water quality criteria for copper and nickel applicable to south San Francisco Bay, California. South San Francisco Bay is the area of San Francisco Bay that is located south of the Dumbarton Bridge. On May 18, 2000, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for the State of California, since the State had not complied with the Clean Water Act. This regulation is known as the ''California Toxics Rule'' or ''CTR.'' Thereafter, on May 22, 2002, the California Regional Water Quality Control Board, San Francisco Bay Region (the RWQCB), adopted amendments to its Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The amendments contained copper and nickel aquatic life water quality criteria for south San Francisco Bay. The State of California calls these criteria site-specific water quality objectives or site-specific objectives. The State of California's State Water Resources Control Board (SWRCB) and Office of Administrative Law (OAL) then reviewed and approved the Basin Plan amendments containing the site-specific objectives. On January 9, 2003, the SWRCB submitted the Basin Plan amendment containing the site-specific objectives to EPA Region 9 for review and approval. On January 21, 2003, EPA Region 9 approved the copper and nickel aquatic life site-specific objectives for south San Francisco Bay.

Since the State of California now has aquatic life site-specific objectives, effective under the Clean Water Act (CWA), for copper and nickel for south San Francisco Bay, EPA has determined that the Federally-promulgated copper and nickel aquatic life criteria are no longer needed for south San Francisco Bay. In this proposed rule, EPA is proposing to withdraw the copper and nickel aquatic life criteria for south San Francisco Bay from the CTR.

DATES: All written comments received on or before July 25, 2003, will be considered in preparation of the final rule. Comments postmarked after this date may not be considered.

ADDRESSES: You should address written comments to Diane E. Fleck, P.E., Esq., Water Division (WTR–2), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attention Docket ID No. OW–2003–0015. Please send an original and three copies of comments and enclosures (including references). You may also submit comments electronically or through hand-delivery or courier. Follow the detailed instructions as provided under ''How and To Whom to Submit Comments.''

FOR FURTHER INFORMATION CONTACT: Diane E. Fleck, P.E., Esq. (WTR–2) or Nancy Yoshikawa (WTR–5) at U.S. EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, CA 94105 (tel: 415–972–3480 or 415–972–3535, respectively, fax: 415–947–3537 or 415–974–3545, respectively) or e-mail at *Fleck.Diane@EPA.gov* or *Yoshikawa.Nancy@EPA.gov.* For general or administrative questions, please contact Brian Thompson at U.S. EPA Headquarters, Office of Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (tel: 202–566–0382, fax: 202–566–0409) or e-mail at *Thompson.Brian@EPA.gov.*

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

No one is regulated by this proposed rule. This proposed rule, if adopted, merely withdraws Federal copper and nickel aquatic life water quality criteria applicable to south San Francisco Bay, California.

How To Obtain Copies of This Document and Other Related Information

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2003–0015. 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 under, ''Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California,'' at U.S. EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, phone: 415-972–3480. This Docket Facility is open from 8:30 a.m. PST to 4:30 p.m. PST, Monday through Friday, excluding legal holidays. A reasonable fee will be charged for copies.

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 identification number.

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

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.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

How and To Whom To Submit Comments

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number 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.'' While EPA is not required to consider these late comments, we will make every attempt to consider them.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and 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. *EDOCKETS.* 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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID OW–2003–0015. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Fleck.Diane@EPA.gov*, Attention Docket ID No. OW–2003–0015. 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 address identified in the following paragraph. 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: Diane E. Fleck, P.E., Esq., Water Division (WTR–2), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attention Docket ID No. OW–2003–0015.

3. *By Hand Delivery or Courier.* Deliver your comments to the address identified in the preceding paragraph, attention Docket ID OW–2003–0015. Such deliveries are only accepted during the docket's normal hours of operation from 8:30 a.m. PST to 4:30 p.m. PST, Monday through Friday, excluding legal holidays.

Background

On May 18, 2000, EPA promulgated a final rule known as the ''California Toxics Rule'' or ''CTR'' to establish numeric water quality criteria for priority toxic pollutants for the State of California, since the State had not complied fully with section 303(c)(2)(B) of the Clean Water Act (CWA) (65 FR 31682). The criteria, codified at 40 CFR 131.38, became the applicable water quality criteria in California effective May 18, 2000, for all purposes and programs under the CWA.

EPA acknowledged in the preamble to the CTR that the State of California is working to satisfy the requirements of CWA section 303(c)(2)(B) and anticipated that the Agency, once the state submitted its water quality standards to EPA, would approve the State-adopted water quality criteria for pollutants included in the CTR (65 FR 31684, May 18, 2000). The State of California calls these criteria site-specific water quality objectives or site-specific objectives. The water quality standards program was developed with an emphasis on State primacy. Although in the CTR EPA promulgated toxic criteria for the State of California, EPA prefers that States maintain primacy, revise their own standards, and achieve full compliance (*see* 57 FR 60860, December 22, 1992).

In a rulemaking similar to the CTR, EPA determined that if the State's criteria were no less stringent than the promulgated Federal criteria, EPA would withdraw its criteria without notice and comment. However, if the State adopted criteria that were less stringent than the Federally-promulgated criteria, but in the Agency's judgment fully met the requirements of the Act, EPA would provide an opportunity for public comment before withdrawing the Federally-promulgated criteria (*see* 57 FR 60860, December 22, 1992). As described in detail below under ''Site-Specific Aquatic Life Objectives for Copper and Nickel,'' the State of California recently adopted copper and nickel aquatic life site-specific objectives for the south San Francisco Bay which EPA subsequently approved.

In today's action, EPA is proposing to amend the CTR by withdrawing aquatic life copper and nickel criteria applicable to south San Francisco Bay, California.

Site-Specific Aquatic Life Objectives for Copper and Nickel

On May 22, 2002, the California Regional Water Quality Control Board, San Francisco Bay Region, adopted site-specific water quality objectives for nickel and copper to protect aquatic life in the south San Francisco Bay and submitted the revised Water Quality Control Plan to EPA on January 9, 2003. The aquatic life water quality criteria for copper contained in the CTR table at 40 CFR 131.38(b)(1) for saltwater are: 4.8 ug/l dissolved acute (exposure for a short period of time) and 3.1 ug/1 dissolved chronic (exposure for an extended [4 day] period of time). The aquatic life water quality criteria for

nickel contained in the CTR table at 40 CFR 131.38(b)(1) for saltwater are: 74 ug/l dissolved acute (exposure for a short period of time) and 8.2 ug/l dissolved chronic (exposure for an extended [4 day] period of time). Both the copper and nickel criteria are further expressed as a function of the water-effect ratio (or WER). The WER in the CTR is assumed to be 1 for all applicable pollutants but may be otherwise defined by the State using appropriate procedures (*see* 65 FR 31718).

The aquatic life water quality objectives for copper adopted by the State of California and approved by EPA for south San Francisco Bay are: 10.8 ug/l dissolved acute (exposure for a 1 hour average period of time) and 6.9 ug/l dissolved chronic (exposure for a 4 day average period of time). The aquatic life water quality objectives for nickel adopted by the State of California and approved by EPA for south San Francisco Bay are: 62.4 ug/l dissolved acute (exposure for a 1 hour average period of time) and 11.9 ug/l dissolved chronic (exposure for a 4 day average period of time).

Under the procedures set out in the National Toxics Rule, published December 22, 1992, and referenced in the CTR, when a state adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the federal regulations to withdraw the federally applicable criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment is unnecessary. However, if a State adopts criteria that are less stringent than the Federally promulgated criteria, but that in the Agency's judgement fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the Federally promulgated criteria.

On October 17, 2002, the State Water Resources Board adopted the site-specific objectives for copper and nickel in the lower south San Francisco Bay. The objectives were subsequently submitted to EPA on January 9, 2003, for its review and approval. EPA recognizes that three out of the four California criteria for copper and nickel are less stringent than the federally CTR promulgated criteria. However, the site-specific objectives were developed from the results of a number of detailed studies and technical reports that were the subject of technical peer review and were part of the collaborative stakeholder process known as the ''Santa Clara Basin Watershed Management Initiative.'' Based on this additional information, EPA determined that these adopted criteria are fully protective of the aquatic life designated uses of California's waters in the south San Francisco Bay and met the requirements of the Clean Water Act. EPA approved California's water quality objectives on January 21, 2003. Therefore, EPA determined that the federal aquatic life water quality criteria for copper and nickel in these waters are no longer necessary.

Because three out of the four California criteria for copper and nickel are less stringent than the federally promulgated criteria, EPA is requesting comments on its action to withdraw copper and nickel criteria from the CTR. EPA will address public comments in a subsequent final rule based on this proposed rule. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

1. Executive Order 12866—Regulatory Planning and Review

This action withdraws specific Federal requirements applicable to south San Francisco Bay, California and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

2. Paperwork Reduction Act

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.*) because it is administratively proposing to withdraw Federal requirements that no longer need to apply to south San Francisco Bay, California.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This proposed rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandate Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's proposed rule is not subject to the requirements of UMRA section 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

5. Executive Order 13132—Federalism

Executive Order 13132, entitled, ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This proposed rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

6. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this proposed rule imposes no regulatory requirements or costs on any Tribal government. It does 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, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

7. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This proposed rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant, and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer and Advancement Act

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 because this rule does not involve technical standards.

List of Subjects in 40 CFR Part 131

Environmental protection, Indian-lands, Intergovernmental Relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 20, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.38(b)(1) is amended by revising Footnote b to read as follows:

§ 131.38 Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California.

* * * * *

(b)(1) * * *

Footnotes to Table in Paragraph (b)(1):

* * * * *

b. Criteria apply to California waters except for those waters subject to objectives in Tables III–2A and III–2B of the San Francisco Regional Water Quality Control Board's (SFRWQCB) 1986 Basin Plan that were adopted by the SFRWQCB and the State Water Resources Control Board, approved by EPA, and which continue to apply. For copper and nickel, criteria apply to California waters except for waters south of Dumbarton Bridge in San Francisco Bay that are subject to the objectives in the SFRWQCB's Basin Plan as amended by SFRWQCB Resolution R2–2002–0061, dated May 22, 2002, and approved by the State Water Resources Control Board. EPA approved the aquatic life site-specific objectives on January 21, 2003. The copper and nickel aquatic life site-specific objectives contained in the amended Basin Plan apply instead.

* * * * *

[FR Doc. 03–16231 Filed 6–24–03; 8:45 am]

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Vol. 68, No. 122

Wednesday, June 25, 2003

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The United States Government Manual	**741–6000**
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Electronic and on-line services (voice)	**741–6020**
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FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954 2
32955–33338 3
33339–33610 4
33611–33830 5
33831–34260 6
34261–34516 9
34517–34774 10
34775–35148 11
35149–35264 12
35265–35524 13
35525–35782 16
35783–36444 17
36445–36742 18
36743–36884 19
36885–37062 20
37063–37386 23
37387–37692 24
37693–37930 25

CFR PARTS AFFECTED DURING JUNE

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.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339
7684 34775
7685 36445
7686 36447

Executive Orders:
12580 (Amended by E.O. 13308) 37691
13159 (See Notice of June 10, 2003) 35149
13219 (See Notice of June 20, 2003) 37389
13304 (See Notice of June 20, 2003) 37389
13308 37691

Administrative Orders:
Notices:
Notice of June 10, 2003 35149
Notice of June 20, 2003 37389
Presidential Determinations:
No. 2003-24 of May 29, 2003 35525
No. 2003-25 of May 29, 2003 35526
No. 2003-26 of June 13, 2003 37387

4 CFR

81 33831

5 CFR

230 35265
301 35265
316 35265
333 35265
337 35265
410 35265
831 35270
842 35270
1600 35492
1601 35492
1603 35492
1604 35492
1605 35492
1606 35492
1640 35492
1645 35492
1650 35492
1651 35492
1653 35492
1655 35492
1690 35492

7 CFR

2 35256
274 37693
300 37904
319 ..... 34517, 37904
400 37697
407 37697
457 ..... 34261, 37697
723 34777
800 ..... 32623, 35490
802 34519
923 37063
930 37726
959 37065
993 37391
1400 33341
1464 34777
1599 36885

Proposed Rules:
810 33408
920 37097
1030 37674
1220 ..... 35825, 36498
1240 37102
1951 35321
3560 32872
3565 34552
4284 35321

8 CFR

1 35273
103 35273
212 35151
239 35273
287 35273

9 CFR

71 36898
82 ..... 34779, 36898
91 37730
93 35529
94 36898
320 37730
381 ..... 37069, 37730
113 35282
430 34208

Proposed Rules:
77 37774
92 37426
93 33028

10 CFR

35 35534
72 33611
73 33611
170 36714
171 36714
765 32955

Proposed Rules:
50 35585
63 37429

12 CFR

37 35283
615 ..... 33347, 33617

703 32958
742 32958
1700 32627
Proposed Rules:
Ch. I 35589
Ch. II 35589
Ch. III 35589
Ch. V 35589

13 CFR

121 ....33348, 35285
Proposed Rules:
121 ....33412, 35334

14 CFR

21 37735
25 ....33834, 33836, 35285, 36449, 36880
39 ....32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787, 35152, 35155, 35157, 35160, 35163, 35286, 36451, 36452, 36454, 36455, 36900, 37071, 37073, 37394, 37396, 37397, 37400, 37402, 37735
61 36902
63 36902
65 36902
71 ....32633, 33231, 33360, 33361, 33579, 33623, 35287, 35288, 35534, 35535, 35947, 36743, 36906, 36907, 36908, 36909, 36910, 37617
91 ....35524, 37735
95 34522
97 ....32633, 33536, 35538
121 37735
125 37735
129 37735
401 35289
404 35289
413 35289
1260 35290
Proposed Rules:
25 ....33659, 35335, 45612, 37205
36 34256
39 ....32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849, 35186, 35826, 36499, 36502, 36504, 36506, 36510, 36513, 36515, 36518, 36520, 36523, 36525, 37102, 37105, 37774
71 ....33426, 33427, 34340, 36948, 36949, 36950
1204 37108

15 CFR

734 35783
740 35783
742 ....34526, 35783
744 34192
745 34526
748 35783
770 35783
772 34192
774 ....34526, 35783
Proposed Rules:
930 34851

16 CFR

305 36458
Proposed Rules:
1500 35191
1700 35614

17 CFR

1 34790
30 33623
40 33623
201 35787
210 36636
228 36636
229 36636
240 36636
249 36636
260 37044
270 ....36636, 37046
274 ....36636, 37044
Proposed Rules:
240 36951

18 CFR

201 34795

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

20 CFR

404 36911
Proposed Rules:
220 34341

21 CFR

3 37075
165 34272
201 32979
310 ....33362, 34273
314 36676
347 ....33362, 35290
349 32981
350 34273
352 33362
369 34273
510 ....33381, 34293
520 ....34533, 34795
522 ....33856, 34533, 34796, 36912
524 ....33381, 36913
558 ....34534, 36744
601 34796
878 32983
888 32635
1300 37405
1301 37405
1304 37405
1305 37405
1306 37405
1308 35293
1309 37411
1310 37411
Proposed Rules:
201 33429
310 36527
312 36527
314 36527
320 36527
343 33429
347 35346
600 36527
601 36527
606 36527
1301 37429
1306 37429

24 CFR

902 37664
903 37664
985 37664
1000 37660
Proposed Rules:
1000 ....34344, 36756

25 CFR

170 33625
309 ....35164, 36745

26 CFR

1 ....33381, 34293, 34797, 37414
31 34797
301 33857
602 ....34293, 34797
Proposed Rules:
1 ....34344, 34874, 34875, 37434
14a 34344
25 34875
31 34875
49 35828
53 34875
55 34875
156 34875
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698
555 37109

28 CFR

5 33629
571 ....34299, 34301
802 32985
Proposed Rules:
523 37776

29 CFR

1910 32637
1926 35172
4022 35294
4044 35294
Proposed Rules:
1910 ....33887, 34036
1915 34036
1926 34036

30 CFR

6 36408
7 36408
18 ....36408, 37077
19 36408
20 36408
22 36408
23 36408
27 36408
33 36408
35 36408
36 36408
56 36913
57 36913
71 ....36914, 37082
75 ....36914, 37082
Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196
Proposed Rules:
1 36955
323 36955

32 CFR

78 36914
152 36915

33 CFR

1 37738
3 37738
5 37738
52 37738
100 ....32639, 32641, 37738
110 37738
117 ....32643, 34302, 34303, 34535, 34799, 34800, 34801, 35296, 37417, 37742
151 37738
154 37738
155 37738
162 37738
165 ....32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803, 35172, 36466, 36745, 37417, 37738
173 37738
174 37738
203 36467
401 36748
Proposed Rules:
117 34877
165 ....33894, 33896, 34370, 35615
181 36957

36 CFR

215 33582
230 34309
242 33402
251 ....35117, 37205
1253 33404
Proposed Rules:
1280 35829

37 CFR

260 36469

38 CFR

1 35297
3 34539
13 34539
21 ....34319, 34326, 35177, 37206
61 34332
Proposed Rules:
20 33040

39 CFR

111 ....33858, 34805

40 CFR

9 37087
51 33764
52 ....32799, 33000, 33002,

33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821, 35790, 36470, 36917, 36921, 37418, 37420, 37742, 37744, 37746
60 35792
61 35792
62 ....34332, 35181, 35299, 35792, 37421
63 ....35792, 37334
81 37090
86 35792
125 36749
180 ....33876, 34825, 35303, 36472, 36476, 36480, 37749, 37759, 37765
257 36487
258 36487
261 32645
271 ....34334, 34829, 36925
439 34831
712 34832
725 35315
761 36927
Proposed Rules:
Ch. I 33898
51 32802
52 ....33041, 33042, 33043, 33665, 33898, 33899, 34560, 36527, 36756, 36959, 36960, 37447
62 ....35191, 35348, 37449
70 37110
82 33284
86 35830
131 37926
146 33902
180 ....35349, 37778
194 33429
261 36528

42 CFR

412 ....34122, 34494
Proposed Rules:
412 ....33579, 34492
413 ....33579, 34492, 34768

43 CFR

4 33794
3800 32656
4100 33794
5000 33794

44 CFR

64 32657
65 ....32659, 32660
67 ....32664, 32669
206 34545
Proposed Rules:
67 ....32699, 32717

45 CFR

46 36929

46 CFR

1 37091
10 35801
15 35801
221 33405

47 CFR

0 36931
2 ....32676, 33020, 33640, 34336
15 37093
21 34547
25 ....33640, 34336, 37772
52 34547
54 36931
73 ....32676, 33654, 35540, 35541, 35542
74 ....32676, 34336
76 35818
78 34336
80 32676
87 32676
90 32676
95 32676
97 ....32676, 33020
Proposed Rules:
1 34560
2 ....33043, 33666
15 32720
18 37112
21 34560
25 33666
54 36961
64 32720
73 ....33431, 33668, 33669, 35617, 36763, 36764
74 34560
76 35833
101 34560

48 CFR

2 33231
32 33231
52 33231
208 36944
228 36944
252 33026
253 36945
Proposed Rules:
Ch. 2 36967
15 33330
31 33326
52 33326
204 34879
206 33057

49 CFR

1 ....34548, 35183, 36496
26 35542
107 32679
171 32679
173 32679
177 32679
180 32679
192 35574
195 35574
375 35064
377 35064
567 33655
571 ....33655, 34838, 37620
574 33655
575 ....33655, 35184
579 ....35132, 35145
597 33655
Proposed Rules:
171 34880
172 34880
173 34880
271 35354
571 36534

50 CFR

17 ....34710, 35950, 37276
100 33402
635 ....35185, 35822, 37772, 37773
648 ....33882, 36946
660 32680
679 ....34550, 37094, 37095
Proposed Rules:
16 33431
17 ....33058, 33234, 34569
20 37362
402 33806
635 36967
648 ....33432, 36970
660 ....33670, 35354, 35575

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 JUNE 25, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in—
California; published 6-24-03

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine; foreign:
Fruits and vegetables, imported; published 6-25-03

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Atlantic highly migratory species—
North Atlantic swordfish; published 6-25-03

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Buprofezin; published 6-25-03
Flufenacet (N-(4-fluorophenyl)-N-(1methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; published 6-25-03
Maneb et al.; published 6-25-03

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Satellite communications—
Direct broadcast satellite service; policy and service rules; correction; published 6-25-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
Detroit River, MI; safety zone; published 6-10-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Fuel tank system safety assessments; compliance deadline extension; correction; published 6-25-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

Land grant institutions (1890); agricultural research and extension activities; matching funds requirements for formula funds; comments due by 6-30-03; published 4-29-03 [FR 03-10527]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; comments due by 6-30-03; published 5-30-03 [FR 03-13558]
Northeastern United States fisheries—
Northeast skate; comments due by 6-30-03; published 5-1-03 [FR 03-10678]

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
Patent Cooperation Treaty application procedure; revision; comments due by 6-30-03; published 5-30-03 [FR 03-13533]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:
New River, Radford Army Ammunitions Plant, VA; comments due by 6-30-03; published 5-29-03 [FR 03-13451]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-3-03; published 6-3-03 [FR 03-13705]
Maryland; comments due by 7-3-03; published 6-3-03 [FR 03-13700]
Pennsylvania; comments due by 7-3-03; published 6-3-03 [FR 03-13711]
Tennessee; comments due by 7-3-03; published 6-3-03 [FR 03-13707]
West Virginia; comments due by 7-3-03; published 6-3-03 [FR 03-13709]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus thuringiensis Cry1F protein in cotton; comments due by 6-30-03; published 4-30-03 [FR 03-10663]
Bifenthrin; comments due by 6-30-03; published 4-30-03 [FR 03-10400]

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-30-03; published 4-30-03 [FR 03-10649]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Wireless telecommunications services—
Bell Operating Companies' separate affiliate and related requirements, etc.; sunset; comments due by 6-30-03; published 5-29-03 [FR 03-13231]

Digital television stations; table of assignments:
South Carolina; comments due by 6-30-03; published 5-27-03 [FR 03-13074]

Radio stations; table of assignments:
Texas; comments due by 6-30-03; published 5-16-03 [FR 03-12201]

FEDERAL RESERVE SYSTEM

International banking operations (Regulation K):
Edge and Agreement corporations, etc.; Bank Secrecy Act compliance; monitoring procedures; comments due by 6-30-03; published 5-30-03 [FR 03-13371]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Disease Control and Prevention

Coal mine safety and health:
Respirable coal mine dust; concentration determination; comments due by 7-3-03; published 5-29-03 [FR 03-13441]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
Food labeling—
Nutrient content claims; sodium levels definition for term ≥healthy≥; comments due by 7-5-03; published 5-6-03 [FR 03-11272]

Medical devices:
Gloves; patient examination and surgeon's gloves; test procecures and acceptance criteria; comments due by 6-30-03; published 3-31-03 [FR 03-07601]

HEALTH AND HUMAN SERVICES DEPARTMENT

Health care access:
Individual health insurance market—
Operation of qualified high risk pools; grants to States; comments due by 7-1-03; published 5-2-03 [FR 03-10713]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
Florida; comments due by 6-30-03; published 3-19-03 [FR 03-06634]

Marine casualties and investigations:
Chemical testing following serious marine incidents; comments due by 6-30-03; published 2-28-03 [FR 03-04809]

HOMELAND SECURITY DEPARTMENT

Immigration:
Electronic signature on applications and petitions for immigration and naturalization benefits; comments due by 6-30-03; published 4-29-03 [FR 03-10442]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Colorado; comments due by 7-3-03; published 6-3-03 [FR 03-13851]
North Dakota; comments due by 7-3-03; published 6-3-03 [FR 03-13852]
Pennsylvania; comments due by 7-3-03; published 6-3-03 [FR 03-13850]

INTERNATIONAL TRADE COMMISSION

Practice and procedure:
General application rules, safeguard investigations,

and antidumping and countervailing duty investigations and reviews; technical corrections, etc.; comments due by 7-3-03; published 6-3-03 [FR 03-13688]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Respirable coal mine dust; concentration determination; comments due by 7-3-03; published 5-29-03 [FR 03-13441]

Underground coal mine operators' dust control plans and compliance sampling for respirable dust; verification; comments due by 7-3-03; published 5-29-03 [FR 03-13528]

LABOR DEPARTMENT

Wage and Hour Division

Fair Labor Standards Act:

Minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees; defining and delimiting exemptions; comments due by 6-30-03; published 3-31-03 [FR 03-07449]

NUCLEAR REGULATORY COMMISSION

Practice and procedure:

Regulatory analysis; individual requirements; treatment criteria; comments due by 7-2-03; published 4-18-03 [FR 03-09606]

Radiation protection standards:

Solid materials disposition control; environmental issues scoping process and workshop; comments due by 6-30-03; published 2-28-03 [FR 03-04752]

POSTAL SERVICE

Domestic Mail Manual:

Alternative addressing formats and postage payment options; standardization; comments due by 6-30-03; published 5-30-03 [FR 03-13473]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 6-30-03; published 5-29-03 [FR 03-13389]

Bombardier; comments due by 6-30-03; published 5-29-03 [FR 03-13120]

Raytheon; comments due by 7-2-03; published 5-16-03 [FR 03-12240]

Schweizer Aircraft Corp.; comments due by 6-30-03; published 5-1-03 [FR 03-10507]

Airworthiness standards:

Special conditions—

Cessna Model 680 Sovereign airplane; comments due by 6-30-03; published 5-15-03 [FR 03-12043]

Israel Aircraft Industries Ltd. Model 1124 airplanes; comments due by 6-30-03; published 4-29-03 [FR 03-10446]

Raytheon Aircraft Co. Model HS 125 Series 700A and 700B airplanes; comments due by 7-3-03; published 5-19-03 [FR 03-12376]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Federal-aid projects; advance construction; comments due by 6-30-03; published 5-1-03 [FR 03-10692]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Liquified natural gas facilities; safety standards; comments due by 6-30-03; published 5-1-03 [FR 03-10689]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Veterans' medical care or services; reasonable charges; comments due by 6-30-03; published 4-29-03 [FR 03-10121]

State cemetery grants; comments due by 6-30-03; published 5-1-03 [FR 03-10688]

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.nara.gov/fedreg/plawcurr.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.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 192/P.L. 108–31

To amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance programs under those Acts, and for other purposes. (June 17, 2003; 117 Stat. 775)

S. 273/P.L. 108–32

Grand Teton National Park Land Exchange Act (June 17, 2003; 117 Stat. 779)

Last List June 2, 2003

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